92-542

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, *et al.*,

Respondents.

Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California, Fourth Appellate District, Division Two

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Full Faith and Credit Clause of the United States Constitution and/or the Full Faith and Credit Act require that federal law determine the preclusive effect of a prior federal order adjudicating state law claims?

2. Are rules of res judicata substantive so as to require, under *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), that state law measure the preclusive effect of a prior state-law-based federal order?

LIST OF PARTIES

The parties to the proceedings below were:

Petitioner – The State of California

Respondent– Superior Court for the State of California, County of Riverside

Real Parties-In-Interest:

Plaintiffs – There are 4,035 individuals who have sued the State of California under the lead name "Penny Newman". The full list of plaintiffs is appended as Appendix E.

Defendants – Alcan Aluminum Corporation
Alumax, Inc./Hunter Engineering
Chesebrough-Ponds, Inc.
Stauffer Chemical Co.
The Deutsch Company
General Electric Company
McDonnell Douglas Corp.
NI Industries, Inc.
Quantum Chemical Corp.
Rheem Manufacturing Co.
General Steel & Wire Company
Paul and Lucille Hubbs
E. Moe McCook
J.B. Stringfellow, Jr.
Stringfellow Quarry Company
Montrose Chemical Corp. of California
Northrop Corporation
Rockwell International Corp.
Quemetco, Inc.
Rainbow Canyon Manufacturing Company
Rohr Industries, Inc.
Chris-Craft Industries, Inc.

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Brennan, Note, *Collateral Estoppel in Asbestos Litigation*, 14 Envtl. L. 197 (1983) 16

Burbank, *Interjurisdicitonal Preclusion, Full Faith and Credit and Federal Common Law: A General Approach*, 71 Cornell L. Rev. 733 (1986) 16

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Degnan, *Federalized Res Judicata*, 85 Yale L. J. 741 (1976) 16

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Shapiro, *State Courts and Federal Declaratory Judgments*, 74 Nw. U. L. Rev. 759 (1979) 16

Smith, Note, *Erie and the Preclusive Effect of Federal Diversity Judgments*, 85 Colum. L. Rev. 1505 (1985) 14, 16

Vestal, *Res Judicata/Preclusion by Judgment: The Law Applied in Federal Courts*, 66 Mich. L. Rev. 1723 (1968) 16

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STATE OF CALIFORNIA,

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v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, *et al.*,

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Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California, Fourth Appellate District, Division Two

PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of California, respectfully prays that a writ of certiorari issue to review the order and opinion of the Court of Appeal for the State of California, Fourth Appellate District, Division Two, entered in the above-entitled proceeding on May 12, 1992.

CITATIONS TO OPINION BELOW

The unreported opinion of the court of appeal denying Petitioner's petition for writ of mandate and discharging the alternative writ, dated May 12, 1992, is

appended as Appendix A. The order of the California Supreme Court, denying Petitioner's petition for review dated July 9, 1992, is reported only at 1992 Cal. LEXIS 3531; and is appended as Appendix B. The unreported order of the court of appeal denying Petitioner's petition for writ of mandate, dated August 8, 1991, is appended as Appendix C. The orders of the California Supreme Court granting Petitioner's petition for review and ordering the court of appeal to issue an alternative writ to Respondent Superior Court, dated September 19, 1991 and October 31, 1991 are reported only at 1991 Cal. LEXIS 4225 and 1991 Cal. LEXIS 4845 respectively; both orders are appended as Appendix D.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a); the Full Faith and Credit Clause of the United States Constitution, Article IV, Section 1; and the Full Faith and Credit Act, 28 U.S.C. § 1738.

The opinion of the California court of appeal was filed on May 12, 1992. Petitioner's petition for review to the California Supreme Court was denied on July 9, 1992. No petition for rehearing was filed.

The decision of the California court of appeal denying Petitioner's petition for writ of mandamus is a "final judgment or decree" under 28 U.S.C. § 1257, and conclusively determines the rights of Petitioner. Stern, Gressman & Shapiro, *Supreme Court Practice*, § 3.11, p. 135 (6th ed. 1986); *Madruga v. Sup. Ct. of California*, 346 U.S.

556, 558 (1954). Petitioner's rights have been adjudicated against it under federal law.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article IV, Section 1:

> Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Full Faith and Credit Act, 28 U.S.C. § 1738:

> The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annex, if a seal exists, together with a certificate of a judge of the court that the said attestation is in form.
>
> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same Full Faith and Credit in every court within the United States and its Territory and Possession, as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

STATEMENT OF THE CASE

Petitioner is a defendant in a consolidated state court "toxic tort" action arising out of a chemical waste disposal site. The state action entails some 4,035 claims for personal injury, wrongful death and property damage, totalling nearly one billion dollars. Petitioner is also a plaintiff in a CERCLA cost recovery action pending in federal court and arising from the same site.

In an order that is not yet subject to appellate review, the district court in the federal action adjudicated certain state law counterclaims against Petitioner. Thereafter, the state trial court applied federal rules of res judicata to give collateral estoppel effect to the state law adjudications from the federal action. In doing so, the state trial court summarily adjudicated Petitioner's fault in the state court action. Under California law, the interlocutory federal order would not be entitled to preclusive effect.

In affirming the grant of collateral estoppel, the state court of appeal held that it was required to apply federal law. It then adopted the view espoused by approximately half of the federal circuits which apply federal rules of res judicata to determine the preclusive effect of federal judgments adjudicating state law claims. The remaining circuits apply state rules of res judicata to such orders.

Both the state and federal actions, and the proceedings from which this Petition arises, are described below.

1. The State Action.

Petitioner is a defendant in the action now pending in the Respondent Superior Court for the State of California for the County of Riverside entitled *Penny Newman, et al. v. J.B. Stringfellow, Jr., et al.*, Civil Action No. 165994MF and 167122, 167173, 167261, 167327, 167467, 167691, 168088, 168349, 168591, 168939, 169223, 169610, 169999 ("*Newman*"). *Newman* was commenced on September 28, 1984. Real parties in interest ("Real Parties") are the plaintiffs in *Newman*, who consist mostly of former and present residents of the community of Glen Avon, located approximately one mile from the Stringfellow Hazardous Waste Disposal Site (the "Site") in the County of Riverside. Real Parties also include defendants who were the owners and operators of the Site ("Stringfellow"), and numerous industrial, chemical and manufacturing concerns (the "Generator Defendants") that deposited chemical waste at the Site.

The Site was constructed by Stringfellow in 1956 and eventually consisted of at least 20 holding ponds into which some 34 million gallons of industrial waste acids and other chemicals were deposited over the years.

Real Party plaintiffs have sued Petitioner under California state law causes of action for (1) private nuisance, (2) breach of mandatory duty, (3) dangerous condition of public property and (4) inverse condemnation, claiming personal injuries and property damage from alleged exposure to chemicals released from the Site. Real Party defendants Stringfellow and the Generator Defendants have cross-complained against Petitioner for indemnity and contribution.

Trial of the first seventeen "test cases" in *Newman* is currently set to commence in early October 1992, and is estimated to last anywhere from nine to eighteen months. Liability findings made in these test cases will then be utilized in the trials of the remaining thousands of claims.

2. The Federal Action.

In 1983 the United States of America and Petitioner commenced the action entitled *United States, et al. v. J.B. Stringfellow, Jr., et al.*, Civ. No. 83-2501 JMI(Mx) in United States District Court, Central District of California (the "Federal Action"), seeking to recover from the responsible parties the costs of cleaning up the Site under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") (42 U.S.C. § 9601, *et seq.*). The defendants in the Federal Action include Stringfellow and the Generator Defendants in *Newman*. Stringfellow and the Generator Defendants counterclaimed against Petitioner for contribution and indemnity under CERCLA and under state law theories of negligence, nuisance, breach of mandatory duty and dangerous condition of public property.

On June 4, 1987 the district court, Judge James M. Ideman, presiding, granted partial summary judgment against Stringfellow and the Generator Defendants, finding them liable to the United States and Petitioner for CERCLA response costs. *U.S. v. Stringfellow*, 661 F.Supp. 1053 (C.D. Cal. 1987). On August 24, 1988 Judge Ideman ordered that a fact finding hearing on Stringfellow's and the Generator Defendants' CERCLA and state law counterclaims against Petitioner be conducted by the Honorable

Harry V. Peetris (Los Angeles Superior Court Judge, Ret.), Special Master. The fact finding hearing commenced before a jury on March 30, 1989 and addressed only the State's liability for conduct prior to January 1, 1980.

At the close of evidence, the Special Master granted Stringfellow's and the Generator Defendants' motion for directed verdict with respect to Petitioner's liability under CERCLA (the "Directed Verdict Order"), denying the motion as to the state law claims and allowing them to go to the jury. On June 2, 1989 the jury returned a verdict finding that Petitioner was *not* liable under state law for negligence in investigating, choosing or designing the Site. However, the jury found Petitioner liable under state law for negligence in supervising the construction of the Site, for delay in cleanup activities at the Site, for creating and maintaining a dangerous condition of public property, for nuisance and for breach of mandatory duty.

On January 19, 1990 the Special Master entered "judgment" notwithstanding the verdict (the "JNOV Order")[1] against Petitioner as to each state law issue on which the jury had found in its favor. The Directed Verdict Order and JNOV Order were adopted by Judge Ideman with his orders of January 10, 1990 and June 5, 1990. It is the latter order of the district court, adjudicating the state law counterclaims against Petitioner, to which the Respondent trial court in *Newman* applied collateral estoppel.

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[1] Although denominated as a "judgment," the JNOV Order is merely interlocutory, since no judgment or final record of decision has been issued in the Federal Action. 28 U.S.C. § 1291.

The Federal Action is yet to be completed, having been trifurcated into three phases: Phase 1 – liability; Phase 2 – remedy (costs, damages, and injunctive relief); and Phase 3 – contribution and allocation. The fact finding hearing was part of Phase 1. Recently, the Special Master presided over a trial to determine Petitioner's share of liability under both CERCLA and state law for the cost of remediating the Site. That matter is currently under submission. No judgment or other order from which an appeal may be taken pursuant to 28 U.S.C. § 1291 has been entered in the Federal Action.

3. The Proceedings From Which This Petition Arises.

On April 25, 1991, on motion of Real Party plaintiffs, the Respondent trial court in *Newman* applied federal rules of collateral estoppel to the state-law-based federal order to summarily adjudicate the following issues against Petitioner:

a. That Petitioner was negligent in investigating the Site;

b. That Petitioner was negligent in choosing the Site;

c. That Petitioner was negligent in designing the Site;

d. That Petitioner was negligent in supervising construction of the Site;

e. That Petitioner was negligent in delaying cleanup activities at the Site;

f. That Petitioner was negligent in failing to remedy conditions at the Site;

g. That Petitioner maintained a dangerous condition of public property at the Site;

h. That by at least January 10, 1975, the Site constituted a nuisance; and

i. That Petitioner created and maintained a nuisance at the Site.

These issues were adjudicated notwithstanding Petitioner's controverting evidence that at no time during the operation of the Site did Petitioner have a commercial, proprietary or managerial interest in the Site. Petitioner's evidence demonstrated that, instead, it was merely exercising its police powers in licensing and regulating activities at the Site for the protection of the health and safety of its citizens.

On June 7, 1991 Petitioner sought appellate review by way of a petition for peremptory writ of mandate.[2] On August 8, 1991 the court of appeal summarily denied the petition. (Appendix C.) On August 19, 1991 Petitioner petitioned the California Supreme Court for review of the appellate court's denial of mandamus.

On September 19, 1991 the California Supreme Court granted the petition for review. The California Supreme Court ordered the state appellate court to issue an alternative writ directing Respondent to set aside its order granting collateral estoppel or show cause why it should not be ordered to do so in light of this Court's holding in

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[2] Respondent also granted Real Party defendants' motion for summary adjudication of the same issues on the same ground of collateral estoppel. Petitioner also petitioned for mandamus relief from that order. Both proceedings were consolidated on appeal and both are the subject of this Petition.

Stoll v. Gottlieb, 305 U.S. 674 (1938), and in light of California's requirement that an order be final on appeal before it may be given preclusive effect. *Producers Dairy Delivery Co. v. Sentry Ins. Co.*, 41 Cal.3d 903 (Cal. 1986). (Appendix D.)

On May 12, 1992 the court of appeal issued an unpublished opinion denying the petition for writ of mandate and discharging the alternative writ. The court of appeal framed the controlling issue as a federal one:

> "[W]ould a federal court apply its own law, or that of California in determining the issue; and, if federal law applies, what does it say?"

(Appendix A at p. App. 7.)

The court of appeal rejected the applicability of *Stoll*, which holds that state law determines the preclusive effect of state-law-based federal judgments. Instead, the state appellate court determined that *Stoll* no longer accurately states the law. (*Id.* at p. App. 9.)

While acknowledging that under California law the federal order would have no preclusive effect (*Id.* at p. App. 8), the court of appeal felt compelled to apply federal law to determine the preclusive effect of the state-law-based federal order. The federal circuits, however, are in conflict as to whether state or federal law measures the preclusive effect of such an order. The appellate court adopted the view espoused by those circuits that apply federal law, and affirmed the trial court's grant of collateral estoppel.

On June 22, 1992 Petitioner again petitioned the California Supreme Court for review. On July 19, 1992 the California Supreme Court denied review. (Appendix B.)

REASONS FOR GRANTING THE WRIT

The court of appeal's decision is based upon a rule of law embraced by approximately half of a deeply divided federal judiciary. Under this rule, federal law determines the preclusive effect of a federal judgment adjudicating state law claims. This rule, however, contravenes both *Stoll* and the principles enunciated by this Court in *Erie v. Tompkins, supra.*

The better rule, which accords with both *Stoll* and *Erie,* is that of the other half of the federal circuits which uses state law to measure the preclusive effect of a state-law-based federal judgment. Review is necessary to resolve the conflict and to reaffirm the principles of *Stoll* and *Erie* which secure the sovereignty of the states in our federalist system.

1. The State Court of Appeal's Decision Conflicts With Applicable Decisions of This Court.

State law must determine the preclusive effect of a federal order adjudicating state law claims. This was confirmed by the Court over a century ago in *Dupasseur v. Rochereau,* 88 U.S. 130 (1875):

> "The only effect that can be justly claimed by the [judgment in the Circuit Court of the United States], *is such as would belong to judgments of the*

> *State Courts rendered under similar circumstances.* . . . [The] court, deriving its jurisdiction solely from the citizenship of the parties, was in the exercise of jurisdiction to administer the laws of the State, and its proceedings were had in accordance with the forms and course of proceeding in the State Courts. It is apparent, therefore, that *no higher sanctity or effect can be claimed for the judgment of the Circuit Court of the United States rendered in such a case under such circumstances than is due to the judgments of the State Courts in a like case and under similar circumstances."*

Id. at 135 (emphasis added).

More than fifty years later, the Court reaffirmed this rule in *Stoll, supra:*

> "Under [the Full Faith and Credit Act] judgments and decrees of the Federal courts in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and under similar circumstances."

Stoll v. Gottlieb, 305 U.S. at 170.

This statement of the law accords with both federal and constitutional law. The Full Faith and Credit Clause of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of the other States." United States Constitution, Article IV, Section 1. The Clause simply directs the courts of each state to give preclusive effect to the judgment of a sister state.

Similarly, the Full Faith and Credit Act, 28 U.S.C. § 1738, provides that full faith and credit be given "in

every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken." The Act only requires that federal courts give preclusive effect to state court judgments under such states' laws. *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 445-46 (1943), *overruled on other grounds, Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 286 (1980). Neither the Clause nor the Act, however, requires the states to apply federal law to determine the preclusive effect of state-law-based federal judgments.

Since *Stoll*, the Court has neither contradicted nor qualified its expression of the law. Nonetheless, the state court of appeal found that "*Stoll* does not accurately state the law." (Appendix A, at p. App. 9).[3] Freed by this conclusion, the court of appeal refused to apply California's law of collateral estoppel which would deny the federal order preclusive effect. Instead, the appellate court felt governed by a contrary federal rule. However, the federal circuits are themselves divided on the question of which law, state or federal, controls.

2. This Court Should Intervene to Resolve a Conflict Among the Circuits Concerning Which Law, State or Federal, Determines the Preclusive Effect of a State-Law-Based Federal Order.

The Third, Seventh, Eighth, Ninth and D.C. Circuits apply state rules to determine the preclusive effect of a

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[3] The court of appeal disparaged *Stoll* as a relic of the Conformity Act that preceded the Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure, however, were adopted by the Supreme Court in 1937 and enacted by Congress shortly thereafter in 1938. *Stoll* was decided in November 1938.

prior state-law-based federal judgment. *Provident Tradesmens Bank & Trust Co. v. Lumbermens Mut. Casualty Co.*, 411 F.2d 88, 94 (3rd Cir. 1969); *Makariw v. Rinard*, 336 F.2d 333, 334 (3rd Cir. 1964); *Hartmann v. Time, Inc.*, 166 F.2d 127, 137-138 (3rd Cir. 1947), *cert. denied*, 334 U.S. 838 (1948); *Albanese v. Emerson Elec. Co.*, 552 F.Supp. 694, 698 (D. Del. 1982); *Williams v. Ocean Transp. Lines, Inc.*, 425 F.2d 1183, 1190 (3rd Cir. 1970) (state law of first forum applied under full faith and credit clause but the federal court sitting in federal question jurisdiction may give greater preclusive effect than a state court would); *Gasbarra v. Park-Ohio Indus. Inc.*, 655 F.2d 119, 122 (7th Cir. 1981); *Midcontinent Broadcasting Co. v. Dresser Indus.*, 486 F.Supp. 858, 860 (D.S.D. 1980), *aff'd*, 669 F.2d 564 (8th Cir. 1982); *Semler v. Psychiatric Institute of Washington, D.C.*, 575 F.2d 922, 927-28 (D.C. Cir. 1978); *Rust v. First Nat'l Bank*, 466 F.Supp. 135, 138 (D. Wyo. 1979); *see discussion*, Smith, Note, *Erie and the Preclusive Effect of Federal Diversity Judgments*, 85 Colum. L.Rev. 505 (1985).

By contrast, the First, Second, Fourth, Fifth, Sixth, Tenth and Eleventh Circuits[4] apply federal res judicata rules to such judgments. *Johnson v. SCA Disposal Services*, 931 F.2d 970, 974 (1st Cir. 1991); *Kern v. Hettinger*, 303 F.2d 333, 340 (2nd Cir. 1962); *Shoup v. Bell & Howell Co.*, 872 F.2d 1178, 1179 (4th Cir. 1989); *Hardy v. Johns-Manville Sales Corp.*, 681 F.2d 334, 337 (5th Cir. 1982); *Aerojet-General Corp. v. Askew*, 511 F.2d 710, 716-717 (5th Cir. 1975), *cert. denied*, 423 U.S. 908 (1975); *Silcox v. United*

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[4] The D.C. Circuit is itself in conflict. *Compare Semler, supra*, with *Hunt v. Liberty Lobby, Inc.*, 707 F.2d 1493 (D.C. Cir. 1983).

Trucking Service, Inc., 687 F.2d 848, 852 (6th Cir. 1982); *Petromanagement Corp. v. Acme-Thomas Joint Venture*, 835 F.2d 1329, 1332-1333 (10th Cir. 1988); *Empire Fire & Marine Ins. Co. v. J. Transport, Inc.*, 880 F.2d 1291, 1293 n.2 (11th Cir. 1989).

This division in the circuits exemplifies the inherent tension between the role of federal and state law in a federalist system that recognizes the sovereignty of the individual states. The conflict arises from the disagreement among the circuits as to whether rules of res judicata are procedural or substantive under the principles laid down in *Erie*.[5] *Compare Gasbarra v. Park-Ohio Indus., supra*, 655 F.2d at 122; *Gatzmeyer v. Vogel*, 589 F.2d 360, 362 (8th Cir. 1978); *Hartmann v. Time, Inc., supra*, 166 F.2d at 138 (all holding state law controls) *with Hunt v. Liberty Lobby, Inc.*, 707 F.2d 1493 (D.C. Cir. 1983); *Aerojet-General Corp. v. Askew, supra*, 511 F.2d at 716-717; *Kern v. Hettinger, supra*, 303 F.2d at 340 (all holding federal law controls).

Fundamentally, the controversy centers on whether the role of a federal court sitting in diversity is merely that of another tribunal of the state or a strictly federal forum.[6] The issue has engendered considerable

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[5] In *Erie*, this Court held that federal courts exercising diversity jurisdiction must follow state law in substantive matters and federal law on merely procedural ones. 304 U.S. at 78. It is noteworthy that *Erie* was decided the same year as *Stoll*.

[6] Although the state law claims in the Federal Action were pendant and not based on diversity jurisdiction, there is no difference for purposes of determining the application of state law under *Erie*. *Gramm v. Lincoln*, 257 F.2d 250, 255 n.6 (9th Cir. 1958).

discussion among the commentators, many of whom have called for resolution by this Court. *See, e.g.*, Emerson, Note, *Res Judicata in the Federal Courts: Federal or State Law?*, 17 Ind. L. Rev. 523, 553 (1984); Smith, *supra;* Degnan, *Federalized Res Judicata*, 85 Yale L. J. 741 (1976); 1A J. Moore, *Moore's Federal Practice*, ¶0.311 (1991); 18 Wright, Miller & Cooper, *Federal Practice and Procedure, Jurisdiction* § 4472 (1981); Vestal, *Res Judicata/Preclusion by Judgment: The Law Applied in Federal Courts*, 66 Mich. L. Rev. 1723 (1968); Shapiro, *State Courts and Federal Declaratory Judgments*, 74 Nw. U. L. Rev. 759 (1979); Boock, Comment, *Res Judicata in the Federal Courts: Application of Federal or State Law: Possible Differences Between the Two*, 51 Cornell L.Q. 96 (1965); Brennan, Note, *Collateral Estoppel in Asbestos Litigation*, 14 Envtl. L. 197 (1983); Burbank, *Interjurisdictional Preclusion, Full Faith and Credit and Federal Common Law: A General Approach*, 71 Cornell L. Rev. 733 (1986).

The question was expressly left open by this Court in *Heiser v. Woodruff*, 327 U.S. 726, 731-32 (1946). The issue must be settled. Absent resolution, both federal and state courts are bereft of guidance and left to divine the appropriate rule for a given case.

3. Rules of Collateral Estoppel Are Substantive, Not Procedural, and Thus *Erie* Requires That State Law Determine the Preclusive Effect of a State-Law-Based Federal Order.

Those federal circuits which use federal law to determine the preclusive effect of a state-law-based federal order contravene *Erie*. Under *Erie*, federal law must yield to state law where a state substantive right is implicated.

304 U.S. at 78. Accordingly, when a state law, such as California's in this case, denies collateral estoppel effect to an order that has not been tested on appeal, the federal court exercising jurisdiction over a pendant state law claim is bound by that law.

As Justice Frankfurter stated in *Guaranty Trust Co. v. York*, 326 U.S. 99, 112 (1945):

> "A federal court sitting in diversity is for that purpose, in effect, only another court of the State.
>
> * * *
>
> The source of substantive rights enforced by a Federal Court under diversity jurisdiction . . . is the law of the States. Whenever that law is authoritatively declared by a State, whether it is voiced by the legislature or its highest court, such law ought to govern in litigation found on that law, whether the forum of application is a State or a Federal court. . . . "

The substantive character of collateral estoppel is well illustrated by the instant case. Under California law, the interlocutory federal order would have no preclusive effect. Through the application of federal law, however, Petitioner is now deprived of its right to present a defense on the merits at trial in *Newman*, and is exposed to astronomical liability as collateral estoppel is extended repeatedly to each of the remaining plaintiffs' claims.

Yet, the federal order is substantively deficient and reversal by the Ninth Circuit is likely. For example, Petitioner unsuccessfully argued to the district court that the state law counterclaims were barred by the doctrine of sovereign immunity and the Eleventh Amendment of the

United States Constitution. Within the last several months, however, in a CERCLA action involving the same parties, the same district court in an opinion issued by another judge held that sovereign immunity barred identical counterclaims against Petitioner. *U.S. v. Montrose Chemical Corp.*, 788 F.Supp. 1485, 1490-1491 (C.D. Cal. 1992)[7] This conflict in the same district court highlights the need for federal appellate resolution of this and many of the other unsettled legal issues on which the federal order rests.[8]

If only one of Petitioner's objections to the state-law-based federal order is sustained, the foundation for

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[7] The *Montrose* court also found that the counterclaimants could maintain defensive claims for set off and recoupment against Petitioner. *Id.*

[8] Petitioner also argued unsuccessfully in the Federal Action that once it was found liable under CERCLA the state law counterclaims were preempted. This is based on the explicit language of CERCLA:

> "Any person may seek contribution from any other person who *is liable* or potentially liable under Section 9607(a) of this title. . . . Such claims *shall* be brought in accordance with this section and the Federal Rules of Civil Procedure, and *shall* be governed by Federal law."

42 U.S.C. § 9613(f)(1). (Emphasis added.)

On the only occasion it has addressed the issue, the Ninth Circuit found Petitioner's preemption argument "plausible," thereby reversing the district court's imposition of sanctions against Petitioner for asserting the argument. *U.S. v. Stringfellow*, 911 F.2d 225 (9th Cir. 1990). Once preempted, the district court lacked subject matter jurisdiction to proceed further with the state law counterclaims, rendering the federal order adjudicating those claims void. *Beers v. Southern Pacific Transp. Co.*, 703 F.2d 425, 429 (9th Cir. 1983).

collateral estoppel collapses.[9] Of course, reversal by the Ninth Circuit will not mitigate the enormous waste that will result from the needless retrial of *Newman* following such reversal.

Most egregious, though, is the prospect that reversal of the federal order's state law adjudications will only come after final judgment has already been entered in *Newman*. By then Petitioner, without benefit of trial or appeal on the merits in any forum, will have already been shackled with a crippling judgment based on the collateral estoppel effect of a void order.

The question of whose law, state or federal, determines the preclusive effect of a state-law-based federal order is substantive. *Erie* requires the application of state law.

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[9] Indeed, as the leading commentators have warned: "The major problem is that a second judgment based on the preclusive effects of the first judgment should not stand if the first judgment is reversed. In some cases, litigants and the courts have collaborated so ineptly that the second judgment has become conclusive even though it rested solely on a judgment that was later reversed. It should always be avoided . . . [being] the grotesque result of perpetuating a judgment that rests on nothing more than a subsequently reversed judgment. . . ."

18 Wright, Miller & Cooper, *Federal Practice & Procedure* § 4433 at 311-12 (1981); *see also*, 1B Moore, *Moore's Federal Practice*, ¶0.441[4] at 746-47 (1991).

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Petition for Certiorari be granted.

Respectfully submitted,

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September 11, 1992

APPENDIX A

NOT FOR PUBLICATION

COURT OF APPEAL – STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, Respondent. PENNY NEWMAN, et al., Real Parties in Interest.	E009583 COUNTY NO. 165994 MF OPINION
STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, Respondent. J.B. STRINGFELLOW, et al., Real Parties in Interest.	E010021 COUNTY NO. 165994 MF (Filed May 12, 1992)

ORIGINAL PROCEEDING; petitions for writ of mandate. Riverside County; E. Michael Kaiser, Judge. Petitions denied.

Daniel E. Lungren, Attorney General, Marvin Goldsmith, Senior Assistant Attorney General, and William L. Carter, Deputy Attorney General, Breidenbach, Swainston, Crispo & Way, Howard Halm, Francis

Breidenbach, Thomas A. Kearney, and Paul Alvarez, Veatch, Carlson, Grogan & Nelson and Mark A. Weinstein for Petitioner.

No appearance for Respondent.

Klein, Wegis, Denetale, Hall, Goldner & Muir, and Anthony J. Klein, Milberg Weiss Bershad Spechtrie & Lerach, Melvyn I. Weiss, William S. Lerach, John E. Grasberger, Anita Meley Laing, and Steven W. Pepich, Welebir & Lister, Douglas F. Welebir, McCuthchen, Doyle, Brown & Enersen, Barry P. Goode and William D. Kissinger, for Real Parties in Interest.

Pursuant to the directive of the Supreme Court, we vacated our original orders denying the State of California's ("State") petitions for writ of mandate and issued an alternative writ, directing real parties to show cause why the relief sought should not be granted.[1] For the reasons which follow, we conclude that our original order was correct, and again deny the petitions.[2]

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[1] The first petition filed by the State (E009583) involved a summary adjudication of issues in favor of plaintiffs Penny Newman, et al. Following our denial of that petition, the State filed a second petition involving a virtually identical adjudication in favor of codefendants J.B. Stringfellow, Jr., et al. (E010021). This petition was also denied, and the State sought further review of both matters. Both were transferred back to this court by the Supreme Court, and we consolidated them for briefing and decision. Our references to "real parties," unless otherwise specified, apply both to plaintiffs and codefendants.

[2] The State contends that the Supreme Court "has determined that the grant of collateral estoppel must be reversed on the basis of *finality*." This is not correct. The Supreme Court transferred the matter to us with instructions pursuant to California Rules of Court, rule 29.4(e). The citation of authority

PROCEDURAL HISTORY

The underlying action, entitled Penny Newman, et al., v. J.B. Stringfellow, et al., is an action for damages involving the operation of a toxic waste disposal facility located in Riverside County, commonly known at this time as the "Stringfellow Acid Pits." Among the defendants are the operator, Stringfellow, a large number of

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which is to be addressed by the parties, and considered by this court, is not a directive to rule in a particular way. Indeed, we were instructed to command respondent and/or real parties to *show cause* why relief should not be granted as prayed; it is absurd to insist that we are barred from considering the arguments and authorities which we have been ordered to solicit.

The State insults the deliberative process by taking the position that in the 10 calendar days between the receipt of real parties' opposition and the issuance of the Supreme Court's order, six justices thoroughly reviewed the massive file, studied the lengthy points and authorities on both sides, and conducted the in-depth independent research necessary to reach a firm conclusion on this complex issue.

Obviously, the directions may well represent the high court's belief or impression that our original decision was incorrect, and we are required to give careful consideration to the authorities cited. However, a court which receives a retransferred case is free to exercise its best judgment on the issues, and need not slavishly follow even the most pointed directions, as long as the order is not framed in specifically mandatory terms. For an extreme example, see *People v. Riegler* (1981) 127 Cal.App.3d 317 [confirming previous reversal after remand on certiorari from the United States Supreme Court, with directions]; *People v. Riegler* (1984) 159 Cal.App.3d 1061 [again confirming reversal and rejecting application of the authority cited by the high court in its second remand following certiorari].)

Our Supreme Court has itself followed this practice. (See *People v. Lanphear* (1980) 28 Cal.3d 463.)

generators and dumpers of wastes, and the State. Currently in progress is a related action in federal court, entitled United States, et al., v. J.B. Stringfellow, Jr., et al., No. CV 83-2501 JMI (MCx). The federal action constitutes the effort by the United States, joined by the State, to compel various parties to contribute clean-up funds under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA," 42 U.S.C. § 9601 et seq.). The plaintiffs in that action have also asserted that defendants are liable under other federal statutes, state statutes, and the common-law principles of nuisance. (See *United States v. Stringfellow* (C.D. Cal. 1987) 661 F.Supp. 1053, 1059.)

In the federal action, various defendants have been found liable for CERCLA costs. These defendants have counterclaimed against the State for contribution and indemnity pursuant to CERCLA, other federal statutes, and state law theories both statutory and common law. The issues raised by the counterclaims include negligence.

Determination of the issues related to the State's liability on the counterclaims based on its activities up through 1980 was referred by the United States District Court to a special master, in the hope that resolution of this question might facilitate settlement. Following a 37-day jury trial, the special master entered a directed verdict finding State liable as an owner-operator of the facility and/or as a disposer of wastes under section 107, subdivision (a) of CERCLA. (42 U.S.C. § 9607.) The jury also returned a verdict finding the State liable, making several specific findings of negligence; for example, it found that the State had been negligent in "supervising

construction of the [disposal] site." Post-trial motions were filed by several parties, and the special master granted a defendants' motion for judgment notwithstanding the verdict, thereby making new findings that the State was negligent in additional respects.

After the post-trial proceedings, the State filed objections with the district judge. These objections, including an objection to the sufficiency of the evidence to support the judgment notwithstanding the verdict, were overruled.

The federal action is proceeding to the stages of determining damages and contribution, and it is not disputed that the orders and findings described above are not yet subject to review as of right by the federal court of appeals.[3]

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[3] At one hearing below, counsel for one of the defendants pointed out that the State could, under federal law, request permission to take an interlocutory appeal. (See 28 U.S.C. § 1292(b).) The State's attorney then informed the court that papers to that effect were in fact ready to be filed. At oral argument, however, we were informed that the district court had refused to certify the matter as appropriate for the interlocutory appeal. We agree that this refusal should not be taken to reflect on the merits of the State's legal position. However, it remains appropriate to ask why the State waited so long to seek such review.

The jury in the federal action returned its verdict on June 2, 1989. On January 9, 1990, the district court judge confirmed the special master's order granting a partial directed verdict against the State. On June 4, 1990, the district court confirmed the special master's order granting a partial judgment notwithstanding the verdict against the State.

Proceedings in the matter below did not reach the hearing stage until April 12, 1991. Real parties suggested below that the

The matters before this court arose when plaintiffs and the codefendants in the state action filed motions for summary adjudication of issues. (Code Civ. Proc., § 437c.) In these motions, real parties asked to have the trial court apply the doctrine of collateral estoppel to the federal court findings, and give preclusive effect to the findings of negligence against the State. The trial court agreed with real parties, granting first plaintiffs' motion and then that of the codefendants. These petitions followed.[4]

DISCUSSION

The question of whether collateral estoppel should be applied has two prongs. First, it must be determined whether the earlier order or judgment is entitled to preclusive effect. Even if an order may be applied collaterally, however, the court retains discretion whether or not to do so.

State had not moved with any speed to seek interlocutory review because it did not wish to risk being bound by an affirmance. This is not implausible. (See fn. 12, *infra*.)

[4] To avoid monotony, we use the terms "collateral estoppel" and "issue preclusion" interchangeably.

The doctrine of res judicata – also sometimes referred to as claim preclusion – bars a party to an action from relitigating his claims in a second proceeding. Collateral estoppel, or issue preclusion, operates to prevent a party or his privy from relitigating issues which were actually decided in earlier litigation. (*Gargallo v. Merriil Lynch, Pierce, Fenner & Smith, Inc.* (6th Cir. 1990) 918 F.2d 658, 660-661.)

I.

A.

What Law Applies in Determining the Effect of the Federal Orders?

Our initial order denying the State's petition with respect to the plaintiffs' motion indicated that, in our view, the findings were entitled to be given preclusive or collateral estoppel effect; this was based on our review of federal law. However, in its orders retransferring the matters to this court, the Supreme Court directed our attention to two cases involving the doctrine of collateral estoppel. As the orders did not contain suggested authority concerning the trial court's exercise of its discretion to apply the doctrine, we will focus our discussion on the essential issue of whether the findings qualify as preclusive.

This question in turn has two facets: would a federal court apply its own law, or that of California in determining the issue; and, if federal law applies, what does it say?

The Supreme Court has directed our attention to the case of *Stoll v. Gottlieb* (1938) 305 U.S. 165, 170, which holds – on a point not previously raised by any party – that state courts may apply the state law of res judicata to determine the effect of a prior judgment or order which was rendered by a federal court *on a state law claim*. Thus if *Stoll* is an authoritative statement of the law, the first argument is that a federal court would apply the California law of res judicata and collateral estoppel here, because the issues determined by the jury were relevant not to the CERCLA claims – which are based on strict

liability – but to the cross-defendants' state-law claims for indemnity based on shared negligence. The second argument, which we discuss below, is that, even if federal courts would not do so, California should exercise the power to apply its own law of preclusion in the circumstances presented by this case.[5]

The California rule is that a judgment is not entitled to collateral estoppel effect until it is no longer subject to direct attack. (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 954 at fn. 11; 7 Witkin, Cal. Procedure (3d ed. 1985) § 212, p. 649.) Thus, it is quite clear that under California law, the orders would not be entitled to res judicata or collateral estoppel effect.

On the other hand, as our Supreme Court has consistently recognized, a federal court " 'judgment or order, once rendered, is final for purposes of res judicata *until reversed on appeal or modified or set aside in the court of rendition.*'[Citations.]" (*Calhoun v. Franchise Tax Board* (1978) 20 Cal.3d 881, 887; emphasis added; see *Reed v. Allen* (1932) 286 U.S. 191, 197; *Martin v. Malhoyt* (D.C. Cir. 1987) 830 F.2d 237, 264.) And it has also been repeatedly

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[5] As real parties quite properly pointed out at oral argument, *Stoll v. Gottleib* actually involved the preclusive effect of a prior federal judgment based on *federal* law, and the statement concerning the application of state law to a state law-based judgment was dicta. However, this statement in *Stoll* was a correct statement of then-existing law, as drawn from *Dupasseur v. Rochereau, infra,* which *did* involve the state's right to apply its own law of res judicata or collateral estoppel to a prior federal judgment based on state law, and that judgment's lack of any greater effect than the state would give it. We will refer to the principle hereafter as the "*Stoll-Dupasseur*" rule.

held that California courts will give the same effect to a federal court's order as that court would give it. (*Younger v. Jensen* (1980) 26 Cal.3d 397, 411; *Estate of Hilton* (1988) 199 Cal.App.3d 1145, 1168.)

Under *Stoll v. Gottlieb*, the findings on state-law issues would not be entitled to preclusive effect in federal courts, because they would not be so entitled in California if rendered by a state court. Thus, under *Younger* and *Hilton*, they would not be entitled to such effect here, but *not* because California law forbids it; the result of non-preclusion would be compelled *because the findings would be denied such effect in the federal courts.*

However, real parties argue vigorously that *Stoll v. Gottlieb* does not accurately state the law, and we agree. Under current federal practice, the federal courts determine the effect of their orders and judgment in accordance with federal law, and this applies equally to judgments rendered on state law issues. As a result, the orders in question *do* qualify for preclusive effect in federal courts, and the courts of this state must give them the same effect.

Before the adoption of the Federal Rules of Civil Procedure, "federal procedure on the law side conformed to state procedure [under the Conformity Act]. Since procedural law largely determines the matters that may be adjudicated in an action, state law had to be considered in ascertaining the effect of a federal judgment." (Rest.2d Judgments, § 87, com. (a).) This was the background for *Stoll v. Gottlieb* and the case on which it relied for the point in issue, *Dupasseur v. Rochereau* (1875) 88

U.S. 130. However, the development of federal procedural law has led to the recognition that federal courts have the power to determine the effect of their own judgments, even if based on questions of state law.

In *Kern v. Hettinger* (2d Cir. 1962) 303 F.2d 333, 340, the court stated that "[o]ne of the strongest policies a court can have is that of determining the scope of its own judgments." While recognizing that where a federal court exercises diversity jurisdiction, the state fixes and controls the rights and obligations of the parties, the court refused to extend this dominion to the determination of res judicata: " . . . it would be strange doctrine to allow a state to nullify the judgments of federal courts constitutionally established and given power also to enforce state created rights." (303 F.2d at p. 340.) (Accord, in similarly strong terms, *Aerojet-General Corporation v. Askew* (5th Cir. 1975) 511 F.2d 710, 716-717 (cert. den. 423 U.S. 908), also a diversity case.)

This rule has been adopted by the majority of federal courts, including the courts deciding *Empire Fire & Marine Ins. Co. v. J. Transport* (11th Cir. 1989) 880 F.2d 1291,-1293 at fn.2, and *Johnson v. SCA Disposal Services of New England* (1st Cir. 1991) 931 F.2d 970, 974 (coincidentally a toxic dump case). Both courts indicated that they believed their holdings to follow the mainstream of the law.

It is true, as the State asserts with its own list of cases, that the circuits do not necessarily all follow the same rule in applying the principles of res judicata or collateral estoppel; there are authorities supporting the State's position and the rule of *Stoll*. (E.g., *Constantini v.*

Trans World Airlines (9th Cir. 1982) 681 F.2d 1199, 1201.)[6] We do not think it useful to measure one list of authorities against another by weight; we believe the principle followed in *Empire Fire & Marine, supra,* to be preferable and supported by the best-reasoned cases.

As an influential commentator observed 30 years ago, "Some res judicata results are controlled by the rules of civil procedure, which should be binding on all courts. Res judicata doctrines that do not draw directly from the rules of civil procedure are nonetheless deeply dependent upon federal procedure, and are supported by 'the nature of judicial power to determine its own boundaries' [citation]. Federal courts thus should be free both to determine the res judicata effects of their own judgments between themselves and to bind state courts to the same rules, even as to substantive matters that otherwise are controlled by state law." (18 Wright, Miller & Cooper, Federal Practice and Procedure (1981) Jurisdiction, § 4472, p. 726.)

The *Stoll-Dupasseur* rule was followed at a time when the federal courts were bound to follow state procedures under the Conformity Act. (Former 28 U.S.C. § 724.) As a result, " . . . all the rules of practice and procedure of the federal courts were the same as those of the states in which they sat . . . " (Degnan, *Federalized Res Judicata* (1976) 85 Yale Law Journal 741, 756-757.) However, the Conformity Act was repealed in 1934 by the adoption of the Rules Enabling Act (now see 28 U.S.C. § 2072), and

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[6] We note, however, that the authorities cited by the State are all less recent than *Empire Fire* and *Johnson, supra.*

with the adoption of the Federal Rules of Civil Procedure in 1938 " . . . [f]ederal practice came to differ from that of nearly all the states, and the earlier arguments for recognition of federal judgments based on conformity lost their force." (Id. at p. 757.) (See also *Carnegie Nat. Bank v. City of Wolf Point* (9th Cir. 1940) 110 F.2d 569, 572, recognizing the primacy of the Federal Rules of Civil Procedure and the inapplicability of the Conformity Act.)[7] The preference for self-determination on procedural issues, with respect to preclusion, has been followed both in cases specifically governed by a federal rule (*Kern, supra*) and those depending only on decisional procedural law (*Aerojet General, supra*).

We agree that a court must have the power to determine the effect of *all* of its decisions; the contrary rule results in inconsistencies which cannot be justified by a rule of deference to state law. If a court has been invested with the power to determine an issue, it is surely "inappropriate," in Professor Degnan's words, for another court to decide whether that determination should be given effect. (Degnan, *supra*, at p. 769.)

It is also worthy of note that strict adherence to the *Stoll-Dupasseur* rule could have paradoxical and contradictory results in matters such as the one before us. The federal action here involves both issues of pure federal

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[7] Indeed, federal courts had never deferred slavishly to state procedures. Thus, in *Herron v. Southern Pacific Co.* (1931) 283 U.S. 91, 94, the court upheld the right of a federal judge sitting in diversity to order a directed verdict, despite a contrary state rule. The court held that " . . . state laws cannot alter the essential character or function of a federal court."

law under CERCLA, and state law claims pendent thereto. It is far from impossible that a set of facts might give rise to a single set of findings or rulings which were relevant under both state and federal law. Under *Stoll*, the preclusive effect of one set of such findings or rulings would be governed by federal law, while the effect of the other set would be controlled by state law. If the law of the forum state differed from federal practice on the point, the result, where preclusion was claimed in a subsequent action, could well be utter confusion and inequity.

Parenthetically, we observe that a variation of the rule which permits the federal courts to determine the effect of their own orders has been employed in the Ninth Circuit, and leads to the same result. A federal court may, for example, elect to follow the law of the state in which it sits, when determining the effect of a judgment rendered in a diversity action or otherwise under state law. However, if, on that point, that state requires deference to the federal court's decision, the somewhat circular result is that the federal court will follow general federal law. (*Bates v. Union Oil Co. of California* (9th Cir. 1991) 944 F.2d 647, 649; see also *Costantini v. Trans World Airlines, supra,* 681 F.2d 1199, 1201.) Thus, even though that federal court looks to state law, it accepts the state's policy of deference rather than reaching the actual state law on preclusion.

B.

Should A Different Rule Apply Where the Prior Federal Judgment Determines State Law Issues?

The State, however, points out that most of the California decisions deferring to federal law on the preclusive effect of federal judgments involve prior federal judgments on issues of *federal* law. It is therefore suggested that we refuse to defer where the prior federal judgment involves issues of *state* law brought, arguably fortuitously, in the federal forum, and that this is authorized by the *Stoll-Dupasseur* rule.

We decline to establish such a variable rule for determining the effect of federal judgments, and we do so for several reasons. First, it is inconsistent with the respect due from one court to another, and constitutes an interference with the first court's judgments, as explained above. Second, there is the danger of contradictory results to which we adverted above. Third, insofar as federal diversity jurisdiction was established to provide a neutral forum, and alleviate fears of local bias against an out-of-state resident (see 28 U.S.C. § 1332; *Pease v. Peck* (1855) 59 U.S. 595, 599), its purpose would hardly be served by allowing the state court to apply its own rules on whether it would respect the federal judgment.

We also find no support for such an approach in the cases. Although *Younger v. Jensen* and *Estate of Hilton, supra,* both involved prior federal judgments on federal issues, we find no authority suggesting that the rule is different when the federal judgment determined state law issues. Thus, in *In re Bailleaux* (1956) 47 Cal.2d 258, 261 (disapproved on other grounds in *In re Russell* (1974) 12

Cal.3d 229, 235), our Supreme Court held that federal law must be applied to determine the preclusive effect of a prior federal judgment in habeas corpus, in which the issues were apparently whether or not the petitioner had satisfied his state parole requirements. Similarly, in *United States Fire Ins. Co. v. Johansen* (1969) 270 Cal.App.2d 824, 834, the court assumed without comment that it would be bound to follow the federal rule on preclusion with respect to a federal judgment which, insofar as is reflected by the opinion, involved issues of state law.

Finally, in *Levy v. Cohen* (1977) 19 Cal.3d 165, our Supreme Court was faced with the question of what effect should be given to the plaintiff's failure to press his claim in a prior federal bankruptcy proceeding, which had resulted in a release of the individual defendants from all liabilities of a limited partnership. In the instant action, plaintiff was suing to recover on promissory notes; that action involved pure questions of state law.

In holding that plaintiff's suit was barred, the court looked to federal law to determine the scope of the bankruptcy judgment. (19 Cal.3d at p. 173.) It found that the federal rule made the bankruptcy judgment binding on a non-appearing creditor such as plaintiff, even though plaintiff's demand had never actually been litigated. The result of the *Levy* court's deference to the federal rule on preclusion was that a state-law claim was held barred in the courts of this state.

While *Levy* is not directly on point, it reflects a willingness to allow the federal court to determine all aspects of the effect of its own judgment, and it does so in the

context of an unadjudicated state-law claim which is thereby forever lost. We can find in these authorities no indication that California would adopt a jealous rule aimed at exerting special powers over a federal court adjudication based on California law.[8]

As a last note, we briefly mention below the limited extent to which California may deny preclusive effect to a prior judgment if the result would be unjust. (See fn. 12, *infra*.) The extent to which California may refuse to give full faith and credit to a sister state judgment is also sharply limited; this state must recognize the foreign judgment even if it offends a strong public policy. (See *World Wide Imports, Inc. v. Bartel* (1983) 145 Cal.App.3d 1006, 1011.) Similarly, we think California must apply even-handed rules of respect to the judgments of other courts, even if by so doing state interests may be adversely impacted.

We therefore conclude that a federal court would look to its own law to determine the effect of the orders in question; even if it looked to California law, the policy of this state would reflect the inquiry back to federal

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[8] Federal courts adopt a uniform rule of deference, according the same preclusive effect to a prior state law judgment as that state would do, even if the judgment determined issues relating to federal law. Thus, in *Migra v. Warren City School Dist. Bd. of Educ.* (1984) 465 U.S. 75, 81, it was held that the state's law of preclusion applied to determine whether a prior state judgment on plaintiff's common-law action barred a subsequent federal civil rights action based on the same facts.

authority. In either case, California respects the final federal decision on the issue.[9]

C.

What Effect Would the Orders Have Under Federal Law?

As we noted above, a federal judgment is routinely given preclusive effect unless and until it is reversed on appeal. However, this result is not invariable, and the State argues that the order and findings in question are not entitled to such effect.

State places primary reliance upon *Luben Industries, Inc. v. United States* (9th Cir. 1983) 707 F.2d 1037. In that case, the court of appeals held that the district court did not abuse its discretion in refusing to give preclusive effect to a previous district court ruling on the identical issue of tax law involved in the current proceeding. The court relied on three particular factors as supporting the district court's ruling – the finding that the earlier ruling was subject to revision by the first court, that it was not then yet subject to appeal[10], and that the government – the losing party – had not had a "full and fair opportunity to litigate" the issue in dispute. The latter point

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[9] Having reached this conclusion, we need not discuss the second case to which our Supreme Court directed our attention, *Producers Dairy Delivery Co. v. Sentry Ins. Co.* (1986) 41 Cal.3d 903. As we noted above, we recognize that California law, as set forth in that case, would not permit the application of collateral estoppel. However, we have found California law to be not controlling.

[10] The appeal in the first case was still pending at the time *Luben* was decided by the court of appeals.

was in turn based on the fact that no appeal was yet possible. (707 F.2d at p. 1040.)

We do not find *Luben* controlling. That case, as do many federal authorities (see also *Robi v. Five Platters, Inc.* (9th Cir. 1988) 838 F.2d 318, 327) also, relied on the Restatement Second, Judgments, quoting section 13, comment (g) as follows:

> "Thus preclusion should be refused if the decision was avowedly tentative. On the other hand, that the parties were fully heard, that the court supported its decision with a reasoned opinion, that the decision was subject to appeal or was in fact reviewed on appeal, are factors supporting the conclusion that the decision is final for the purpose of preclusion."

In *Robi*, the court, citing the same section of the Restatement, held that the pendency of an appeal did not deprive a judgment of preclusive effect where the parties had in fact been "fully heard" and the court issued a "reasoned opinion." (838 F.2d at p. 327; see also *Reed v. Allen* and *Martin v. Malhoyt, supra.*) The implication in *Luben* that a party who has not yet had the opportunity to pursue his appellate remedy has therefore not "fully and fairly litigated" the issue is not supported by precedent or logic.

Even the *Luben* court recognized that "final," for the purpose of preclusive effect, does not require that a judgment or order be "final" in the sense of appealable, as used in 28 U.S.C. section 1291. The court also acknowledged that under the Restatement, and federal law, a judgment need only be "sufficiently firm" to make the application of estoppel equitable. (707 F.2d at p. 1040.) As

Robi makes clear, the fact that appeal proceedings have not yet been completed does not prevent a finding that the party against whom issue preclusion is sought had a "full and fair opportunity to litigate" the matter; it is obvious that the phrase can properly be interpreted to cover only the opportunity to litigate the matter *at trial*. This being so, it should not be controlling whether an appeal cannot yet be taken, or whether it has been taken and is still pending. In either case, the lower court's judgment must retain its effect.

In this case, we find that the federal court's orders and findings meet the test of the Restatement and the federal authorities, and are "sufficiently firm" to deserve preclusive effect under federal law. The orders and findings were reached after a 37-day jury trial in which 25 witnesses testified and over 300 exhibits were introduced. Before trial in the federal court, even the State recognized that the findings might have preclusive effect in the state action, and itself agreed that both sides had every incentive to fully litigate the matter. While the State, at the time of the hearing, did not have the absolute right to appeal, the State had challenged the jury's findings by motion before the special master, and then sought review of his rulings before the district court. The jury's findings have therefore been confirmed through two additional levels of consideration, and the special master's further findings of negligence have been reviewed by the district court.[11] It cannot be disputed that the State has had a full

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[11] Under federal law, a jury's findings of fact are entitled to substantial deference, and will be accepted if supported by any valid evidence. (See *Lumbra v. United States* (1934) 290 U.S. 551,

opportunity to litigate the issues at the trial level, and the confirmation and acceptance of the findings by the special master and the district court persuades us that they are "sufficiently firm."

II.

Do Policy Considerations Require that the Findings not be Given Collateral Estoppel Effect in This Case?

A.

Federal law also recognizes that even if the formal prerequisites to the application of collateral estoppel are met, a rigid approach is inappropriate; the courts have discretion to reject the doctrine in any given case. If "the application of offensive estoppel would be unfair to a defendant, a trial judge should not allow the use of offensive collateral estoppel." (*Parklane Hosiery Co., Inc. v. Shore* (1979) 439 U.S. 322, 331; see also *United States v. Kaytso* (9th Cir. 1988) 868 F.2d 1020, 1022.) We next consider whether the trial court abused its discretion in applying the doctrine.[12]

553.) If the federal court, on appeal, chooses to apply California law to any review of the findings, the result will be the same. "In reviewing the evidence on such an appeal all conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged in to uphold the verdict if possible." (*Crawford v. Southern Pac. Co.* (1935) 3 Cal.2d 427, 429.) Thus, the likelihood of a reversal on the pure findings of fact is not great.

[12] California law also permits some leeway in applying the doctrine. (See *Sandoval v. Superior Court* (1983) 140 Cal. App.3d 932, 941; cf. *Slater v. Blackwood* (1975) 15 Cal.3d 791, 796.)

We must stress here that we are not called upon to exercise our independent judgment on the question; the function of a reviewing court in this context is solely to determine whether the trial court's decision fell within the limits of discretion, reasonably and judiciously exercised. (*Wong v. Davidian* (1988) 206 Cal.App.3d 264, 269.) We may find an abuse of discretion only if the lower court's ruling "exceeded the bounds of reason." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)

First, the State argues that it is inappropriate to decide "21st century environmental tort" issues affecting California and California governmental entities under federal law. Of course, insofar as the issues involve the application and construction of federal statutes, deference to the federal court is entirely appropriate. We must disagree with the State's characterization of the findings of negligence as being unique and precedential; the concept of negligence as a basis for civil liability has an ancient history in the law. Juries and judges in all jurisdictions are regularly required to decide whether certain conduct constitutes negligence in the most technically esoteric fields. We do not believe that the task of applying well-established standards to factual questions concerning the establishment and operation of a toxic dump site is so legally complex and momentous that it must be reserved for a state court.

The State also argues that applying the doctrine of collateral estoppel was incorrect here because one of the primary justifications for the doctrine – that of judicial economy – is not met. The State points out that the federal findings only cover its liability up until the year 1980, and that no allocation of liability has been made;

thus, it argues, a great deal of evidence concerning its alleged negligence is bound to be introduced at trial here even if the findings are given effect, and no substantial time would be saved. The answer to this contention is simply that we respect the trial court's discretion. The trial judge was in the best position to determine whether a significant amount of time would be saved, and we will not disturb this decision. We also observe, however, that the saving of time is not the only reason for applying collateral estoppel, which is also founded on the principles of fundamental fairness and the aim of fixing an end to litigation. (See *Parklane Hosiery, Inc. v. Shore, supra,* 439 U.S. at p. 326.)

B.

The State asserts that the order and findings must not be given preclusive effect because they were wrong, or wrongly decided. The general rule followed in the federal courts is that once a judgment is entitled to res judicata effect, the fact that it is legally or factually erroneous is irrelevant. (*Federated Dept. Stores v. Moitie* (1981) 452 U.S. 394, 398. Even taking into account the principle that collateral estoppel may be rejected if to do so would create a palpable injustice (see *Parklane Hosiery, supra;* see also *Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283, 297), and bearing in mind as well that where the first judgment is not yet finding a more flexible approach may be desirable, we find no error in the trial court's decision to apply the doctrine.

The State's main argument is that the federal court was wrong in permitting the jury to make findings

concerning negligence, because under CERCLA, negligence is irrelevant, and if CERCLA applies, it completely pre-empts state law. Thus, the State reasons, the findings were superfluous and will be negatived on appeal.[13] The general rule, as the State asserts, is that collateral estoppel will not apply unless the issue in question was both actually litigated and *necessary to the decision* in the earlier case. (*In re Latch* (11th Cir. 1987) 820 F.2d 1163, 1166.)[14]

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[13] This argument was made by the State in a motion for judgment on the pleadings. The district court found it to be frivolous, and awarded sanctions. On appeal from this award, the court of appeals reversed, remarking that the State's construction of the relevant portions of CERCLA was "plausible" and therefore could not support an award of sanctions.

We do not believe the State can take much comfort from this ruling. In our view, "plausible" is a word which invites suspicion. This is borne out by Webster's Third New International Dictionary (1961) page 1736 which gives as a definition of the word "*superficially* worthy of belief." (Emphasis added.)

[14] Although we admit that we have not conducted exhaustive research into the issue, which is not crucial to our decision, we have found no authority discussing the application of this rule to an instance in which an issue is vigorously litigated at trial and a finding is made, but an appellate court later determines that the finding was unnecessary or irrelevant to the controlling legal principles. There is some authority that a California court need not give preclusive effect to a judgment which it determines to have been rendered in the absence of jurisdiction. (See *Strangman v. Duke* (1956) 140 Cal.App.2d 185, 191; the federal rule, however, is somewhat different, at least when determining whether to give effect to a state judgment [see *Marrese v. American Ac. of Orthopaedic Surg.* (1985) 470 U.S. 373, 375].)

We question whether the principles behind the doctrine of preclusion, and its exceptions, would require the result desired by the State. Even if an issue is later determined to be irrelevant

The State cites no authority supporting its construction of CERCLA as entirely pre-emptive, and it would be presumptuous of us to announce that the district court erred. We note that the provisions of CERCLA have been held *not* to prohibit a CERCLA defendant from pursuing state law remedies of indemnity and contribution against a party who is not liable under the federal law. (*United States v. Hooker Chemicals & Plastics Corp.* (W.D.N.Y. 1990) 739 F.Supp. 125.) Furthermore, if State is successful on appeal in arguing that it is not subject to liability under CERCLA at all, then state law claims clearly come into play.[15]

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to the final resolution of an action, should the factual resolution in the first action not be entitled to preclusive effect as long as that issue was fully litigated? That is, if the parties have the motive and opportunity to vigorously litigate an issue, why should its eventual immateriality deprive a factual finding of effect?

This situation should be compared with that in which an issue was clearly immaterial, and therefore not fully litigated, or in which the court in the first actions made an unnecessary finding, so that the losing party, not realizing that an issue was of purported significance, may not have fully presented its case. (See Rest.2d Judgments, § 27, coms. (c) and (e).)

[15] The State's cavalier assertion that the federal court lost jurisdiction over the state law issues instantaneously when the State's liability under CERCLA was determined is not supported by logic – and certainly not by the authority cited. *DeTomaso v. Pan American World Airways, Inc.* (1987) 43 Cal.3d 517, 520, fn. 1 does no more than state the well-known rule that objections to jurisdiction are never waived. The State's position on this point would apparently mean that the federal court's jurisdiction to make findings depends on the order in which issues are reached, and does not allow for the utility of having findings on multiple theories, if a ruling on one issue is reversed on appeal.

The State also asserts that if it is not held liable under CERCLA, the codefendants will not be able to obtain indemnity under their state law claims because the State will not be "jointly and severally liable" under CERCLA. It is true that a right to equitable indemnity generally depends on the existence of joint and several liability among the tortfeasors. (*Munoz v. Davis* (1983) 141 Cal.App.3d 420, 425.) However, the "key ingredient" in the concept of equitable indemnity is *equity*. (*Munoz v. Davis, supra,* at p. 428.) Even if the defendants in the federal action are found liable solely under CERCLA, and the State is eventually found not liable under that act, we are not persuaded that the defendants would have no equitable remedy. Where two parties are both factually responsible for harm, the circumstance that one tortfeasor is held liable to the plaintiff on a theory legally inapplicable to the other does not always bar the first tortfeasor from seeking indemnity. Thus, in *County of San Mateo v. Berney* (1988) 199 Cal.App.3d 1489, 1494, defendant County was sued solely on a theory of inverse condemnation. This theory, of course, was not applicable to a private party whose negligent or otherwise tortious acts, according to the County's cross-complaint, contributed to the injury to plaintiffs. Nevertheless, the appellate court found "no logical reason" why the claim for indemnity from the third party should not stand.

In this case, it may be that the defendants will be found liable under CERCLA, and that, on appeal, the finding of State's concurrent liability under that act may be reversed. But if State's negligent acts in fact contributed to the damages claimed in the federal action, and which the defendants are required to pay, we are not

prepared to say that the State may not be the subject of demands for indemnity based on negligence.[16]

Finally, the State makes several additional arguments attacking the legal correctness of the federal court's rulings. It argues that the federal court improperly deprived it of its right to present state law immunity defenses, but we do not find it necessary to assume that a reversal on this issue would vitiate the findings on the preliminary facts of negligence.[17] The State also argues that errors were made with respect to the admission or exclusion of evidence and the application of legal negligence standards; however, in light of the brevity of these arguments, and the paucity of authority cited, we do not feel compelled to presume that the federal appellate court will find reversible error.

In summary, we find that the trial court did not abuse its discretion or commit legal error in determining to apply the doctrine of collateral estoppel as requested by real parties. We have not reached this conclusion lightly, and we are sensible of the serious arguments raised by

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[16] We also note that the counterclaims also claimed indemnity under statutory theories, and State has not demonstrated that it cannot be jointly liable with the co-defendants under these statutes.

[17] The trial court here has expressly recognized that the immunity defenses remain to be tried here, so that the State has not been permanently deprived of the opportunity to present them. Given the State's insistence that state law issues be decided by state courts, it should be pleased with the chance to argue these issues to a state court.

the State with respect to the prospect of conflicting judgments. However, it is our view that where parallel litigation proceeds in jurisdictionally distinct fora, it is not possible to be confident that injustice will not result from *either* the application or rejection of the doctrine. If the federal order is affirmed, relitigation of the issues in state court would not only be wasteful, but would create the danger of inconsistent results – indeed, in that case the State would only be benefitted if an inconsistent result is reached in the state action, even though the prevention of such results, with the concomitant negative reflection on the justice system, is a primary reason for applying the doctrine. If the federal rulings are reversed, we recognize that the state court proceedings may be thrown into a chaos, the path out of which we will not attempt to describe. Absent a crystal ball, no court faced with the situation in the case at bar can be sure of compelling a just result.

However, we have been persuaded in the end by the essential inequity, as recognized by the trial court, of permitting the State to avoid the results of the federal trial. It is beyond dispute that the issues of the State's negligence were fully and exhaustively litigated. Even if the directed verdict and the judgment notwithstanding the verdict be set aside, the State would still be faced with jury findings of negligence and liability. The State has been energetic and ingenious in presenting reasons in law why it "must" be freed from the consequences of the federal litigation; it has presented no reasons in equity why it *should* be so released.

The petition for writ of mandate is denied. The alternative writ is discharged and the stay of proceedings previously issued by this court is dissolved.

NOT FOR PUBLICATION

/s/ McKinster
J.

We concur:

/s/ Dabney
Acting P.J.

/s/ Hollenhorst
J.

APPENDIX B

No. 4/2 E009583 – E010021
S022505

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

STATE OF CALIFORNIA, Petitioner

v.

RIVERSIDE COUNTY SUPERIOR COURT, Respondent
PENNY NEWMAN et al., Real Parties in Interest
and companion case

(Filed July 9, 1992)

Application for stay and petition for review DENIED.

Panelli, J. and Baxter, J. are of the opinion the petition should be granted.

Lucas, C.J. did not participate.

Arabian
Acting Chief Justice

APPENDIX C

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, Respondent. PENNY NEWMAN, et al., Real Party in Interest.	E009583 COUNTY NO. 165994 MF (Filed Aug. 8, 1991)

THE COURT:

We are not persuaded that the recent amendments to Code of Civil Procedure section 437c, subdivision (f), deprive the trial court of the discretionary power to make determinations not falling within its scope. The order in the federal action was entitled to preclusive effect. Whether to give it such effect was within the trial court's discretion, and we do not find an abuse of that discretion.

The petition is DENIED.

McKINSTER
Acting P.J.

cc:
Superior Court Clerk, Riverside County, P.O. Box 431, Riverside, CA 92502
and attached mailing list.

APPENDIX D

No. CA 4/2 E009583 – S022505

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

STATE OF CALIFORNIA, Petitioner

v.

SUPERIOR COURT OF THE COUNTY OF RIVERSIDE, Respondent
PENNY NEWMAN et al., Real Parties in Interest

(Filed Sept. 19, 1991)

Petition for review granted. The matter is transferred to the Court of Appeal, Fourth Appellate District, Division Two, with directions to vacate its order denying the petition for writ of mandamus, and to issue an alternative writ directing the Superior Court for the County of Riverside to set aside its order of April 25, 1991, granting plaintiff's motion for summary ajudication of issues in Newman et al. v. Stringfellow, Jr., et al., Nos. 165994MF, 167122, 167173, 167621, 167327, 167467, 167691, 168088, 168349, 168591, 168939, 169223, 169610, and 169999, insofar as that order determines the liability of petitioner or show cause before the Court of Appeal why it should not be ordered to do so in light of Stoll v. Gottlieb (1938) 305 U.S. 165, 170, and Producers Dairy Delivery Co. v. Sentry Ins. Co. (1986) 41 Cal.3d 903, 910-911.

The order of this court made on August 23, 1991, staying trial shall remain in effect until the Riverside County Superior Court complies with the alternative writ

of mandate or the final disposition of the petition for writ of mandate, which ever first occurs.

Lucas, C.J. did not participate.

Chief Justice

Mosk
Associate Justice

Panelli
Associate Justice

Kennard
Associate Justice

Arabian
Associate Justice

Baxter
Associate Justice

George
Associate Justice

ORDER GRANTING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
Fourth Appellate District, Division Two,
No. E010021 – S023105
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

STATE OF CALIFORNIA, Petitioner

v.

SUPERIOR COURT OF THE COUNTY OF RIVERSIDE,
Respondent
J.B. STRINGFELLOW, JR., et al., Real Parties in Interest

(Filed Nov. 4, 1991)

Petition for review GRANTED.

The matter is transferred to the Court of Appeal, Fourth Appellate District, Division Two, with directions to vacate its order denying the petition for writ of mandamus and to issue an alternative writ directing the Superior Court for the County of Riverside to set aside its order of August 21, 1991, granting the Coordinating Committee's motion for summary adjudication of issues in Newman v Stringfellow, Jr. et al., No. 165994 MF, or show cause before the Court of Appeal why it should not be ordered to do so in light of Stoll v. Gottlieb (1938) 305 U.S. 165, 170, and Producers Dairy Delivery Co. v. Sentry Insurance Co. (1986) 41 Cal.3d 903, 910-911.

The order of this court made on August 23, 1991, staying trial shall remain in effect until the Riverside County Superior Court complies with the alternative writ

of mandate or the final disposition of the petition for writ of mandate, whichever occurs first.

Lucas, C.J. did not participate.

Chief Justice

Panelli
Associate Justice

Kennard
Associate Justice

Arabian
Associate Justice

George
Associate Justice

Baxter
Associate Justice

Associate Justice

APPENDIX E

Abraham, Milton; Abraham, Norma; Acosta, Mauro F.; Acree, Sybl; Aguilar, Henry; Aguilar, Yvonne; Aguilar, Dominic; Aguilar, Adrian; Anderson, Lee; Mick-Anderson, Susan; Andre, Marie; Anzalone, Sherry; Anzalone, Gina; Anzalone, Michelle; Arkenburg, Mark; Arkenburg, Shawn; Armstrong, Paul; Armstrong, Hilary; Arriaga, Jimmy; Arriaga, Pauline; Arriaga, Adrianne; Asplin Sr, William; Asplin, Brenda; Asplin Jr, William; Babinchak, John; Pethel, Betty; Baca, James; Bain, Robert; Bates, Carolyn; Beam, Beverly; Beard, Ronald; Beard, Sandy; Beard, Troy; Beard, Trevor; Bell, William; Bell, Norma; Bennett, Robert; Bennett, Geneine; Bequette, Frank; Betancur, Evelyn; Berg, Donald; Billington, Marcus; Billington, Tracy; Billington, Daniel; Bishop, Chester; Bishop, Gertrude; Robillard, Lawrence; Robillard, Christi; Borrero, Manuel; Borrero, Flotilda; Bowman Sr, Allan; Bowman, Christina M.; Bowman, Kevin; Bowman Jr, Allan; Bowman, Yvette; Bowman, Christina L.; Brannan, Michael K.; Brannan, Priscilla; Brannan, Michael C.; Brannan, Denise; Brannan, Marcy; Bravo, Julio P.; Bravo, Gloria V.; Brown, Euclid; Brown, Alice; Brown, Rosely; Browner, Kent; Browner, Donna; Broyles, Lewis; Broyles, Michael; Broyles, Mary; Bruno, Christine; Bruno, Ernest; Buchanan, Steven L.; Buchanan, Jenifer; Buchanan, Steven C.; Buchanan, Jenifer R.; Bullard, Hugh; Burgess, Harold; Burgess, Collene; Burgess, Collete; Burgess, Sheena; Burgess, Paul; Burton, Darlene; Burton, Ariana; Bussear, William; Bussear, Thelma; Espinosa, Roberto; Espinosa, SanJuana; Espinosa, David; Espinosa, Roberto F.; Bussee, La Vaughn; Bustamante, Emilio; Butler, Rodney; Butterfield, Richard; Cadenhead, Jon; Cadenhead, Roxanne; Campbell, Kimberly; Campbell, Curtis; Carman II, James;

Carranza, Antonio; Cashen, Charles; Cashen, Linda; Cashen, Stacey; Patterson, Craig; Castellanos, Sofia; Cavinder, Lyle; Cavinder, Rose; Chavez, Rene; Chavez, Linda; Chavez, Cynthia; Chavez, Jennifer; Chriss, Florence; Christensen, Gary; Christensen, Margaret; Christensen, Shawn; Coats, Delmar; Colquitt, Paul; Contreras, George; Contreras, Maria; Contreras, Jesse; Contreras, Mary; Cook, Jill; Cope, Craig; Cope, Lonnie; Copeland, Vernon; Copeland, Joan; Cordero, Jairo; Cordero, Lourdes; Couch, Randy; Couch, Sherri; Crain, Terry; Horn, April; Creed, Donna; Cruz, Josue; Curran, Michael; Curran, Mary; Curtis, Delayn; Curtis, Warren; Curtis, Craig; Dahm, Terry; Darrin, Lesa; Butler, Kathy; Butterfield, Bart; Butterfield, Mary; Davenport, David; Davenport, Rita; Davenport, Adam; Davenport, Amy; Davenport, Peter; Davis, William; Davis, Diane; Detterich, Paul; Detterich, Karen; Devor, Ken; Devor, Sharon; Docker, Robert; Duncker, Jim; Runkle, James; Runkle, Lisa; Eckmark, Sharon; Edwards, Larry; Edwards, Janice; Elmore, Karen; Elmore, Lester; Ely Jr, John; Ely, Joy; Erwin, Florence; Escajeda, Enrique; Eves, Richard; Eves, Antionette; Fantocone, James; Fantocone, Margaret; Fionda, Keith; Fionda, Diane; Fionda, Leticia; Fontaine, Robert C.; Fontaine, Helen; Fontaine, Robert A.; Fontaine, John; Fontaine, Mark; Fontaine, Gerald; Fontaine, Thomas; Wagenstein, Patricia; Fritz, Lillian; Fryback, Glendora; Galaz Jr, Joe; Galaz, June; Gallo, Richard; Gallo, Kay; Gandara, Ricardo; Gandara, Phyllis; Santos, Victoria; Elliott, Esther; Stringer Knight, Denise; Gandara, Lisa; Gandara, Richard R.; Garcia, Francisco; Garcia, Janie; Garrett, Frances; Garrett, Lannes; Gayk Sr, Raymond; Gayk, Maureen; Hernandez, Petronilo;

Giannini, Virginia; Gibson, Florence; Feller, Arlene; Gibson, Ray; Gibson, Catherine; Gibson Sr, Ronald; Gil, Larry; Gonzalez, Adolfo; Gonzalez, Consuelo; Gonzalez, James; Goodwin, Gerald; Goodwin, Susan; Grace, Rhonda; Gross, Lavern; Gross, Cathy; Gudin, Maria; Guerin, Robert; Hahn, Alan; Hahn, Renee; Hakomaki, Gary; Hakomaki, Jan; Holliday, Ronald; Hampton, Danny; Hampton, Baudelia; Hampton, Marie; Harp, Addison; Harp, Edith; Harris, Patricia; Hurtado, Rosalio P.; Hartsell Sr, Robert; Hartsell, Joan; Harvey, Edward; Harvey, Sandra; Harvey, Sarah; Harvey, Richard; Hernandez, Esperanza; Langford, Frank; Langford, Dortha; Hoffman, Loraine; Holliday, Calleen; Hollingworth, John; Holt Jr, Delmer; Howard, Owen; Hrouda, Frank; Hrouda, Sebastiana; Inaba, Mitsuru; Jackson Jr, Donald; Jackson, Debbie; Johnson, Carl; Johnson, Jean; Johnson, Iva; Johnson, John; Johnson, Darlene; Johnson Jr, John; Johnson, Erik; Kaney, John; Kehn, John F.; Kehn, Constance; Kendrick, James; Kendrick, Shirley; Knapper, Deborah; Knoop, Cecilia; Knudsen, Verlin; Knudsen, Winifred; Kolb, Edward L.; Hover, Mary; Kolb, Edward M.; Kolb, Tammy; Kolb, Robert; Kolb, Daniel; Kosut, Bert; Kosut, Wilma; Krocker, Charles; Krocker, Carol; Kruger, Madison; Kruger, Lynnea; Kruger, Wink; Kruis, Eldon; Kruis, Sheila; Kruis, Jason; Kruis, Mishonda; LaBonte, Dorothy; Lancaster, Daniel; Lancaster, Patricia; Strong, Rose; Lancaster, Theresa; Lancaster, Michael J.; Lane, William; Lang, Zane; Larkin, Chuck; Larkin, Gail; Larson, Carol; Lawson, Don; Lawson, Lucille; Lee, Rustin; Leslie, Clarence; Levers, Melvin; Levers, Marcella; Levers, Shelley; Levers, James; Levers, Kimberly; Levers, Ruth; Lewenthal, Larry; Lewenthal, Debra; Lewis, Ollie; Leyva,

Jose; Leyva, Elaine; Leyva Jr, Jose; Leyva, Paul; Lovelly, Marguerite; Lopez, Arthur; Lopez, Mary; Lopez, Cathy; Lopez, Christy; Roldan, Ramiro; Lopez, Donna; Lopez, Raymond; Lopez, Josephine; Lopez, Richard; Pokorny, Carol; Lopez, Lisa; Lundvall, Pamela; Pokorny, Nicole; Lowry, Floyd; Lozado, Debbie; Lozado, Denise; Lucier, Claude; Lusk, Norman; Lusk, Linda; Lytle, Raymond; Maclam, James P.; Maclam, Linda; Madetzke, Maurine; Mancinas, Ramon; Martin, Herman; Martin, Mitchell; Martin, Susan; Martin, Gina; Marty, Carl; Marty, Rowena; Mashburn, Frank; Mashburn, Nancy; Mathis, Loren; McCown, Eric; McDermott Jr, Timothy; McDermott, Pamela; McFeely, Karen; McGoogan, William; McGuire Sr, Francis; McGuire, Josita; McGuire Jr, Francis; McGuire, Harold; McIntosh Jr, Robert; McIntosh, Ellen; McIntosh, Robert; McIntosh, Megan; McIntosh, Brian; Williams, Evan; McKay, David; McKay, Robyn; McVeigh, Paul; McVeigh, Cathy; McWilliam Jr, Albert; Medina Sr, Gilbert; Medina, Gloria; Ramirez, Lydia; Meehan, Terri; Meigide, Allen; Meigide, Patricia; Merha, Alan; Merha, Sally; Mestas, Suzanne; Meyers, Patrick; Meyers, Erma; Miller, Clyde; Miller, Mary; Miller, Jaxon; Miller, Leah; Moore, Darryl; Moore, Judith; Moore, Steven; Moore, Bryan; Moore, Helen; Moreno, Fernando; Moreno, Mary; Morgan, Larry; Morgan, Elizabeth; Morton, Dean; Morton, Toshi; Lowe, Belinda; Munoz, Benito; Pennell, Joan; Munoz, Louie; Munoz, Rose; Murphy, John C.; Shackelford, Cindy; Nason, Richard; Nason, Judy; Gable, Cheryl; Neal, James; Neal, Shirley; Gross, Swain; Gross, Briana; Newman, Ella; Newman, Penny; Newman, Jan A.; Newman, Shawn; Nugent, Lonnie; Nugent, Sharon; Oates, Lou; Olin, Brenda; Olson, Judy; Olson, Ross;

Olson, Robert; Olson, Donna; Olson, Travis; Thompson, Toni; Padron, Martha; Parma, Charles; Parma, Diann; Passmore, Melodie; Passmore, Randy; Peramaki, Michael; Peramaki, Sandra; Peters, Gary; Peters, Iris; Pfister, Norman; Pilcher, Dale; Pilcher, Linda; Ponti, Charlotte; Postl, Linda; Prescott, Linda; Provonsha, Barbara; Provonsha, Lynn; Quesada, Manuel; Quesada, Nadina; Quesada, Manuel A.; Quesada, Marcos; Reichard, Eugene; Reichard, Mary; Reid, Bennett; Reid, Winsome; Reid Jr, Bennett; Reid, John; Reid, Brittany; Reinalda Sr, Robert; Richendollar, Craig; Richendollar, Jean; Riley, Richard; Riley, Linda; Rittenhouse, Delbert; Roach, Dorothy; Robinson, Robin; Rodriguez Sr, Javier; Rodrigue, Candace; Rodrigue, Frank; Rodrigue, Wayne; Rodrigue, Lisa; Rodrigue, Steven; Ingram, Dian; Rorer, Beatrice; Ross, Marilyn; Rozycki, Jerzy; Rozycki, Isabelle; Rubalcava, Jesus; Rubalcava, Petra; Rubalcava, Jose; Rubalcava, Martin; Rusinko, Scott; Peterson, Annette; Rusinko, Michael; Rusinko, Richelle; Russell, Virginia; Russell, Carl; Ruth, Kevin; Ruth, Kathy; Sanchez, Ruben; Sanchez, Elizabeth; Sandoval, Anthony; Sandoval, Tony; Eckmark, Tammy; Scarlett II, Donald; Spears, Jamie; Schardt, Ronald; Schardt, Kandace; Schulze, Manfred; Scherer, Richard; Neely Scherer, Esther; Schlemmer, Jerry; Schlemmer, Marilyn; Schmid, Raymond; Schmid, Connie; Schmittroth, John; Schulze, Catherine; Seeley, Denise; Seeley, Jim; Seeley, Keith; Seeley, Crystal; Seymour, Berniece; Seymour, Daniel; Seymour, Carmen; Seymour, Edwin; Sharp, Ruth; Sharp, Al (Floyd); Shelton, Lorna; Shipley, Gary; Shipley, Enza; Shipley, Brad; Berghorst, Jeremy; Shipley, Tammi; Shuman, Paul; Simas, Daniel; Simas, Nancy; Smith, Barbara; Smith, John P.; Haney,

Nancy; Smith, Scott; Smith, Cynthia; Smith, Nancy; Smith, Edward A.; Smith, Matthew; Smith, Mark J.; Smith, Luke; Smith, Richard J.; Smith, Mary; Smith Jr, Stanley; Smith, Christine; Snider, Mary; Spence, Michael; Spence, Charla; Spencer, Lawrence; Spinney, Linda; Spencer, Connie; Stark, Lonnie; Stark, Joann; Stark, Crystal; Stark, Jacob; Stouvenel, Kathleen; Stouvenel, Michael; Stouvenel, Thor; Stouvenel, Storm; Stouvenel, Trent; Stouvenel, Jana; Stouvenel, Ryan; Stouwie, Renda; Strain, Paul; Stuvick, Bernard; Grech, Sylvia; Summers, Gary; Summers, Debra; Surville, Louis; Surville, Lillian; Tarris, Kathryn; Taylor, Donald; Taylor, Virginia; Thomas, Steven; Thomas, Frances; Thomas, Edward; Thomas, Anthony; Thornton, John; Thornton, Rebecca; Todd, Dorothy; Todd, Harvey; Todd, John; Todd, Cynthia; Tonnessen, Walter; Tonnessen, Grace; Tovar, Edward; Townsley, Carol; Treiber, Kenneth; Treiber, Doris; Uranich, Gary; Valadez, Marie; Valencia, Francisco; Valencia, Ernestina; VanBibber, Harold; VanBibber, Diana; VanDyke, Dolly; Newman, Tina; VanHooser, Vance; VanLaar, James; VanLaar, Arlene; VanLaar, Vincent; VanLaar, Jamie; VanNatta, Robert; VanNatta, Hazel; James, Conway; Vasquez, Victoria; Vaughn, William; Vaughn, Deborah; Veatch, Inez; Velasquez Sr, Jerry; Velasquez, Theresa; Velasquez, Jacob; Velasquez, Jerry; Vickery, Alice; Vidales, David; Walker, Robert; Walker, Diann; Wansa, Ronald; Wansa, Paula; Wansa, Kellie; Wansa, Kristie; Waters, Robert; Waters, Valeria; Watson, Richard; Welty, Joyce; Whitaker, Mark; Wier, Ethel; Williams, Gary; Williams, Kathy; Williams, Robert; Williams, Shelba; Williams, Stacey; Reno, Maria; Wilson, Barbara; Wohlgemuth, Richard; Wood, William; Woodard,

Jack; Wright, Roger; Young, Charles; Young, Kathleen; Zazzaro, Gaetano; Zimmerman, Glen; Zimmerman, Bernita; Zimmermann II, Roy; Zimmermann, Janet; Zylstra, Karen; Gandara, Arthur; Gandara, Shizuko; Offenbach, Jean; Gandara, Raymond; West, Josephine; Gandara, Joe; Gandara, Richard G.; Gandara, James; Stockman, Mary; Howard, Mark; McGrath, Wendy; Ruth, Brooke; Schulze, Heather; Schulze, Steve; Schulze, Wendy; Schulze, Jeffrey; Hampton, Chad; Hampton, Jaime; Roberts, Esmond; Riley, Rhonda; Riley, Brannon; VanBibber, Ernest; VanBibber, Mark; Garcia, Teresa; Muniz, Katherine; Garcia, Regina; Walker, Steven; Walker, Laura; McVeigh, Daniel; Reyes, Monica; Hernandez, Charles; Inaba, Meiko; Inaba, Douglas; Inaba, Laurie; Seymour, Tania; McDermott, Timothy; McDermott, Jennifer; Rorer, Casper; Munoz, Louie Jr; Munoz, Gloria; Barron, Christine; Lancaster, Michael T.; Lancaster, Tieg; Cooper, Tracy; Cooper, Pauline; Marty, Michelle; Gonzalez, Dorothy; Wilcox, Shawna; Prescott, Paulette; Prescott, Melissa; McWilliam, Patricia; Gammon, Mary; McWilliam Sr, Albert; McWilliam, Brandon; Smith, Richard; Smith, Roger A.; Betancur, Arthur; Betancur Jr, Arthur; Betancur, Alexander; Gil, Jenny; Gil, Isaac; Gil, Genevieve; Gil, Stephanie; Tarris, Jeffrey; Tarris, John; Russell, Kathryn; Rust, Dorothea; Desousa, Laura; Andre, Pete; Adame, Pauline; Bain Jr, Robert; Bain, Richard; Gonzalez, Carol; Gonzalez, John; Gonzalez, Renee; Meehan, Gregory; Davenport, Tracy; Meehan, Paul; Labonte, Anne; Labonte, Jeanne; Labonte, Catherine; Labonte, David Jr; Labonte, Danielle; Christensen, Terry; Day, Kathlyn; Dennis, Carolyn; Todd, Steven; Todd, Stanley; Spencer, Larry; Spencer, Michelle; Hernandez,

Connie; Hernandez, Johnny; Hernandez, Lucille; Watson, Gina; Watson, Natalie; Lopez, Billy; Robinson, Sarah; Robinson, John II; Williams, Gary Jr; Tatosian, Susan; Leslie, Roxanne; Leslie, Jeffery; Leslie, Jassen; Leslie, Brian; Russell, Mark; Russell, John; Russell, Robert; King, Tracey; Lowry, Thelma; Rodriguez, Martha; Rodriguez, Victor; Rodriguez, Carmen; Docker, Angela; Cramer, Elaine; Bell, Walter; Bell, Patrick; Bell, Brian; Welty, George; Welty, Deborah; Welty, Robert; Welty, Marian; Zehner, Robert; Mestas, Michael; Mestas, Michael Jr; Mestas, Jillian; Mestas, Steven; Mestas, Michelle; Ponzini, Timothy; Ponzini, Melinda; Morse, Heather A.; Ponzini, Lindsey; Thronson, Larry Jr; Thronson, Steven; Thronson, Erica; Mrvichin, Draza; Mrvichin, Barbara; Mrvichin, Vladimir; Peters, Danny; Peters, Michelle; Edwards, Patricia; Gigandet, Claudia; Edwards, William; Hernandez, Jeremy; Siens, Ruthie; Siens, Matt; Siens, Aaron; Smith, Steven; Arellano, Melinda; Tobar, Denise; Smith, Stanley; Smith, Craig; Hanson, Erik; Hanson, Luther; Lopez, Rosaly; Pfister, Robert; Braley, Sandra; Copeland, Michael; Copeland, Kerry; Copeland, Lyle; Myers, Steve; Tonnessen, Tyson; Tonnessen, Terry; Tonnessen, Lisa; Hampton, Calvin; Hampton, Garry; Hampton, Henry; Hampton, Wayne; Kellogg, Sandra; McFeely, Michael; McFeely, Erin; Carlson, Duane; Mercer, Paula; Carlson, Dustin; Snider, Bernard; Shearer, Terry; Snider, Dennis; Pilcher, Brian; Pilcher, Bradley; Pilcher, Jennifer; Martin, D'Jean; Lusk, Michelle; Lusk, Christopher; Lusk, Catherine; Lusk, Mary; Eckmark, Charles; Cadenhead, Joshua; Cadenhead, Jennifer; Carpentier, Cecelia; Carpentier, John; Steingone, Cynders; Spencer, Vienna; Carpentier, Autumn; Carpentier,

Shannon; Brooks, September; Brooks, Matthew; Carpentier, Gideon; Stouwie, Albert; Stouwie, Albert Jr.; Stouwie, Daniel; Stouwie, Melissa; Pigott, Michele; Schardt, Debra; Schardt, Carole; Cazessus, Manuel; Sirevaag, Roberta; Sirevaag, Marc; Davis, Zeberiah; Davis, Juddadiah; Barth, Richard; Barth, Cheryl; Barth, Robin; Barth, Matthew; Rogers, William; Rogers, Doretta; Rogers, Senita; Rogers, Kestrel; Muehlig, Kay; Muehlig, Casey; Muehlig, Cale; McGoogan, Mary; McGoogan, Steven; McGoogan, Jeffrey; McGoogan, Craig; Cruz, Joshua; Cruz, Christopher; Cruz, Cynthia; Bullard, Wesley; Bullard, Robert; Noe, Tonia; Vaughn, Rita; Zimmerman, Laura; Diederich, Janis; Zimmerman, Glen; Decker, Victor; Decker, Twila; Gandara, Corina; Rodriguez, Veronica; Rodriguez, Javier Jr; Alberts, Sheri; Chriss, Susan; Darrin, Kaleb; Darrin, Zeke; Larson, Jason; Larson, Travis; Labbe, Enedina; Gonzalez, Rene; Sanchez, Lisa; Sanchez, Monique; Keele, Jessica; Curran, Ginger; Sandoval, Arleen; Sandoval, Vanessa; Carlson, Walter; Carlson, Florence; Carlson, David; Shearer, Dorothy; Shearer, Donald W.; Snyder, Steven; Snyder, Pamela; Snyder, Sandra; Goodwin, Tony; Goodwin, Randy; Hakomaki, Stacey; Hakomaki, Christopher; Thornton, Jody; Thornton, Jason; Peramaki, Reina; Peramaki, Tawney; Greene, Barbara; Corona, Kymberly; Gibson, Kevin; Gibson, Gail; Gibson, Sarah; Gibson, Alicia; Gibson, Neil; Mays, Alana; Merha, Alan Jr; Merha, Annette; Walter, Angela; Orian, Victoria; Darner Jr, Richard; Darner Sr, Richard; Newman, Raymond; Newman Sr, Ivan; Newman, Duane; Newman, Michael; Snider, Judy; Snider, Brent; Snider, Tiffany; Provonsha, Christopher; Provonsha, Teresa; Mason, Evelyn; Mason,

Jennifer; Almaraz, Anthony; Woodard, Susan; Woodard II, Jack; Woodard, Jeffrey; Nason, Bret; Galvan, Edward; Smith, Brian S.; Smith, Mark B.; Herndon, Oscar E.; Herndon, Vera J.; Herndon, Ray; Herndon, Ronnie; Herndon, Richie; Herndon, June; Herndon, Vera L.; Brooks, Sherry; Herndon, Karen; Herndon, Oscar R.; Baca, Charitta; Baca, Mark; Grech, Giuseppe; Grech, John; Grech, Paul; Cervantes, Elisa; Contreras, Alfred; Munoz, Susan; Cates, Paula; Brown, Melody; Brown, Jimmie; Andrews, Honi; Brown, Jimmie II; Brown, Wayne; Brown, Wyndee; Brown, Trini; Townsley, Joseph; Townsley, James Jr; Townsley, Jolene; Holcomb, Wanona; Holcomb, Jerry Sr; Holcomb, Jerry Jr; Holcomb, Tamara; Trust, Charlotte; Trust, Don; Trust, Kenneth; Trust, Jerry; Schlect, Gregory; Schlect, Debra; Sunrise, Vicki; Schlect, Stephanie; Schlect, Sara; Schlect, Keri; Meade, Peggy; Meade, Shawn; Meade, Kevin; Meade, Raemie; Marlatt, John Sr; Marlatt, Doras; Marlatt, John Jr; Simpson, Cathlenna; Marlatt, Frank; Ellis, Sandra; Scarbrough, Frances; Scarbrough, Jesse; Thompson, Cynthia; Thompson, James; Young, Tina; Heggie, Renee; Manzano, Antonio; Nanzano, Angelina; Eckebrecht, Eleanor; Manzano, Jose Sr; Manzano, Maria; Manzano, Frankie; Horn, John Jr; Horn, Ramona; Horn, John Sr; Horn, Donald; Horn, Steven; Horn, Cynthia; Rosa, Leroy Jr; Rosa, Janet; Rosa, Jesse; Blauert, Carl; Blauert, Thelma; Schulte, Susan; Miles, Laura; Vicuna, Sylvia; Allison, Wilmer; Allison, Marguerite; Manettas, Carol; Sirevaag, Keith; Cramins, Penny; Cramins, Richard; Cramins, Tatia; Alexander, John; Alexander, Connie; Rogers, Jacquie; Rogers, Tony; Alexander, Mike; Alexander, Randy; Alexander, Adam; Rogers, Anthony; Mahoney, James; Mahoney, Margaret; Nugent, Derek;

Nugent, Brandon; Nugent, Alicia; Nugent, Jared; Barhite, Ethel; Scrivener, Marie; Maple, Beth; Maple, James; Maple, Rachelle; Maple, Lynn; Maple, Donna; Reischman, Betty; Lopez, Raul; Shirkey, Wanda; Blankenship, Sandra; Closson, Richard; Meigide, Lorna; Meigide, Candice; Reyes, Leonard; Miller, James; Miller, Julie; Miller, Robert; Miller, Paul; Otter, Russel; Cordova, Ignacia; Cordova, Manuella; Sarenana, Natalie; Cordova, Anthony; Cordova, Rebecca; Sarenana, Michael; Sarbeck, Roy; Sarbeck, Linda; Sarbeck, Katrina; Rodriguez, Laura; Rodriguez, Fidel; Rodriguez, Fidel L.; Rodriguez, Laura M.; Hough, Gordon; Hough, Alva; Barnhart, Leo Amos; Barnhart, Nancy; Barnhart, Leo Arthur; Sirevaag, Trudy; Sirevaag, Matthew; Hotte, June; Sirevaag, Pamela; Guerrero, Joe; Boston, Russell; Boston, Florence; Ponti, Samuel; Ponti, Mike; Ponti, Robert; Ponti, Daniel; Ponti, Joseph; Melton, Candith; Kehn, John N.; Kehn, Brent; Zylstra, Edward; Pollock, Brianna; Pollock-Mount, Lonna; Kelley, Clyde; French, Barbara; Escajeda, Beatrice; Escajeda, Jacqueline; Escajeda, Geraldine; Escajeda, Michael; Escajeda, Kenneth; Hicks, Deborah; Chenelle, Paulette; Hicks, Randy; Hicks, Michael; Hicks, Kathleen; Hicks, Tom; Abraham, Joyce; Kersey, Lisa; Zimmermann III, Roy; Zimmermann, Kari; Zimmermann, Ryan; Vaccaro, Yvonne; Reagle, Dennis; Reagle, Sherry; Reagle, Dennis Jr; Reagle, Amanda; Carrigan, Kathy; Carrigan, Therman; Sample, Curtis; Sample, Kevin; Hughes, James III; Hughes, Mary; Hughes, James IV; Hughes, William; Hughes, Clara; Hurtado, Della; Hurtado, Rosalio R.; Zamora, Rosella; Hernandez, Evelyn; Almaguer, Ernest; Almaguer, Josie; Almaguer, Sonya; Almaguer, Alicia; Almaguer, Christina; Almaguer, Victor; Carrasco, Linda;

Gomes, Lorraine; Gibson, Kenneth; Harrell, Janet; Johnston, Carrol; Johnston, Sandra; Gaw, Lee Jr; Beeson, Valerie; Gaw, Cory; Jobe, James; Miller, Ellsworth; Miller, Viola; Miller, Ellsworth Jr; Murphy, Marylyn; Murphy, Michael; McCarter, James; Ojeda, Geraldine; Paradise, Lorraine; Almaguer, Mary L.; Reed, Kim; Perry, Patricia; Tatum, Garrick; Fionda, Frank; Fionda, Myrna; Fionda, Lucinda; Carrasco, Reuben; Hill, Lorraine; Phelps, Cathleen; Harrell, Dennis; Harrell, Michael; Olin, Veronica; Paradise, Leonard; Tolbert, David; Sandoval, Jennie; Sandoval, Phillip; Sandoval, Reuben; Sandoval, Alexander; Taylor, Rick; Lowery, William; Lowery, Beulah; Contreras, Cynthia; Contreras, Debra; Contreras Jr, George; Mullette, Edward Jr; Newberry, Kyle; Taylor, Ravon; Runkle, Amy; Wright, Marion; Wright, James; Wright, Margo; Wright, John; Hicks, Gary L.; Hicks, Sandra; Hicks, Gary T.; Hicks, Bonnie; Martinez, Rodrigo; Martinez, Catherine; Martinez, Arthur; Martinez, Sylvia; Rankin, Gloria; Thornton, Sheila; Hedgpeth, Dannie; King, Dorothy; Bates, Jimmy; Bahling, Juanita; Sundeen, Kellie; Harris, Richard; Harris, Kimberlie; Zumaya, Alberto; Zumaya, Veronica; Bafford, John; Bafford, Connie; Bafford, Christopher; Bafford, Traci; Westrope, Earl; Russell, Lori; Murrill, Mesha; TAC Development Corporation; Muehlig, Karter; McCarter, Gloria; McCarter, Layla; Nelson, Norma; Nelson, Fred; Floyd, Thomas; Floyd, William; Floyd, James; Floyd, Kenneth; Robinson, Keith; Newman, Jan E.; Neely, David; Neely, Tamara; Edgerson, Rosetta; Tatum, Valerie; Jackson, Tyrell; Reed, Tanisha; Fionda, Jason; Galaz, Cory; Staggs, Kelby; Hollingworth, Earlene; Hunter, Virginia; Ruane III, Frank; VanHooser, Lorene; Ponti, Nena; West, Gary; West,

Michael; West, Susan; Lewenthal, Jonathan; Lewenthal, David; Oates, Irene; Kennedy, Wilson III; Oates, Lou II; Masterfield, Ronald; Materfield, Jacquelyn; Smith, Larry; Smith, Sarah; Smith, Erica; Smith, Stephanie; Coats, Doris; Cunningham, Khristine; Benway, Dana; Smith, Carolyn; Nimmo, Michelle; Smith, Christopher; McCarty, James; Wray, Elijah; Millerd, Mary; Abraham, Gary; Baca, Cynthia; Bain, Carol; Bequette, Florine; Blair Jr, Lawrence; Borrero, Carlos; Bowman, Mary; Bowman, James; Burton, William; Butterfield, Jed; Butterfield, Rand; Butterfield Jr, Richard; Castellanos, Regina; Castellanos, Cecilia; Wynn, Alice; Contreras, Arthur; Thornton, Kimberly; Kosut, Gregory; Labonte, Dave; Thronson, Larry; Cramer, Sylvan; Cruz, Flora; Garrett, Willie; Lawson, Veronica; Harbour, Laurie; Dragoman, Phillip; Guerin, Betty; Guerin, Michael; Guerin, Patty; Guillen, Jose; Guillen, Lilia; Guillen, Luis; Guillen, Pilar; Guillen, Sara; Guillen, Vicente; Harbour, Tommy; Warren, Talina; Lane, Tamara; Lane, Scott; Lundy, Clarence; Madetzke, Raymond; Muirhead, John; Postl, James; Postl, Jason; Riddle, Charles; Riddle, Victoria; Ross, Randy; Ross, Sandy; Spies, Annette; Wilder, Jack; Wilder, II, Jack A.; Cooper, Jeannette; Stevens, Sunshine; Rhoads, Judy; Watkins, Julie; Chappell, Elizabeth; Granback, Ted; Granback, Vickie; Granback, Christin; Granback, Amy; Carlson, Dean; Peterson, Lisa; Carlson, Jeanette; Anderson Young, Marie G.; Garringer, Patricia; Weir, Nicole; Wilson, Gilbert; Wilson, Elizabeth; Wright Jr, James; Wright, Jack; Keigley, Tracy; Walker, Juliann; Campuzano, Dolores; Villines, Lawrence; Villines, Nicholas; Vasquez, Tammi; Vasquez, Todd; Hamilton, Judy; Tarris, Jennifer; Spencer, Indiana; Sherman, Wayne; Strong, James; Salinas Jr, Merced;

Salinas, Esperanza; Salinas, Mercy; Salinas, Jasper; Stewart, Elizabeth; Stewart, William; Stewart, Frank; Stewart, Eileen; Rubio, Rosalie; Cervantes, Salvador; Robinson, Joseph; Neal, Curtis; Neal, Dennis; Morrow, Susan; Baxter, Ryan; Mathews, James; McMains, Billy; McMains, Christina; McMains, Jerrod; McMains, Jason; McMains, Jake; Munson, Claire; Munson, Earl; Carr, Leslie; Coble, Diana; Coble, William; Miller, Jack; Friday, Lawrence; Friday, Karen; Friday, David; Friday, Renee; Robinson, Sheila; Conklin, Oscar; Chopp, Charles; Chopp, Charles II; Bloom, Shirley; Bloom, William; Bloom, Jennifer; Bloom, Jamie; Bloom, Billy; Blair, Donna; Blair, Jessica; Blair, Jonelle; Blair, Jane; Almaguer, Mary H.; Miles, Mark; Manning, Emma; Lopez, Vincent; Lopez, Frances; Keigley, Marilyn; Keigley, Michael, Kendrick, Susan; Kendrick, Christopher; Kopping, William; Holland, Michael; Houston, Colleen; Houston, Harold; Hoyt, Vincent; Hoyt, Joanne; Hoyt, Tony; Hoyt, Michael; Canter, Kathleen; Arcet, Belinda; Arcet, Michael; Bos, Merlin; Bos, Christine; Bos, Monty; Buie, Richard; Bos, Tamara; Bos, Aaron; Bos, Gregory; Barnes, Robert; Campbell, Brandon; Campbell, Rhonda; Couts, Delmore; Decasas, Christina; Contreras, Richard K.; Contreras, Richard S.; Deanda, Jesse; Eason, Vernon; Eason, Eva; Edwards, Debora; Edwards, Thomas; Edwards, Thomas Jr.; Edwards, Tera; Elliott, Amanda; Elliott, Baldwin; Garcia, Anita; Garcia, Rudy Jr.; Golden, Charles; Golden, Lisa; Golden, Charles Jr.; Golden, Theresa; Holland, Betty; Holland, Debroa; Holland, John; Holland, Noble; Jolley, Dewayne; Quesada, Linda; Jolley, Yuri; Deanda, Jody; McNeal, Katherine; Rose, Teresa; Kukol, Travis; Lopez, Maria; Lopez, Luis; Milne, Barbara; Neville, Norman;

Nittel, Diane; Nittel, Tiffany; Palko, Edward Jr.; Rodriguez, Anna; Samis, Gerald; Samis, Shirley; Schlitz, Eric; Schlitz, Johanna; Scollo, John; Scollo, Roberta; Taglavore, Cheryl; Scollo Jr., John; Scollo, Michele; Stillwagon, Christine; Stillwagon, Julie; Stillwagon, William C.; Stillwagon, William H.; Trigg, Afton; Trigg, Helen; Turner, Chester; Turner, Gary; Turner, Pamela; Turner, Colleen; Augustine, Shelley; Vickery, Lisa; White, Ethel; White, Howard; White, James; White, Dennis Sr; White, Douglas; White, Allen; Asher Sr, David; Asher, Dorwyn; Asher, Dolores; Asher, Daniel; Buckner, Randle; Buckner, Sherrill; Bunn, Mildred; Burton, Leah; Bussear, William II; Cadle, Wilbur; Cadenhead, Mary; Cadenhead, Phillip; Cochran, Stephen; Devor, Donald; Devor, Judy; Dunmore, Thomas; Dunmore, Barbara; Dunmore, Jennifer; Colburn, Stacy; Glenn, Joyce; Glenn, William; Glenn, Andrew; Gorder, Gertrude; Gorder, Roy; Gorder, Larry; Gorder, Michael; Goudy, Vernon; Goudy, Rita; Haber, Rafael Jr; Haber, Rafael; Haber, Maria; Whittaker, Yamile; Haber, Eddie; Hall, Donald; Hall, Sheila; Holding, Kenneth M.; Holding, Diana; Holding, Kenneth W.; Holding, Kimberly; Holding, Kevin; Holt, Carroll; Holt, Karen; Holt, Valarie; Holt, Arthur; Jones, Lisa Renee; Keller, Hope; Kendrick, Richard; Kendrick, Steven; Kendrick, Laura; Kukol, Thomas Jr; Lafon, Ernest; Lafon, Verna; Lancaster, Johnnie; Mayall, Barbara; Mayall, Charles; Mayall, Charles Jr; Jackson, Katherine; Mello, Penny; Maupin, Kim; Miller, Sharon; Martin, Gregory; Braun Martin, Maxine; Martin, Andrea; Martin, Slade; Martin, Cole; Mashburn, Jeffrey; Mashburn, Mark; Mendoza, Elizabeth B.; Mendoza, Louie; Newman, Jesse; Newman, Jeremy; Whitney, Lynette; Betz, Lillian;

Buckner, Patricia; Buckner, Randle II; Hensley, Dona; Hensley, Jody; Hensley, Larry; Hensley, Robert; Horn, Becky; Hurley, Joshua; Hurley, Mary; Hurley, Rodney; Jones, Lawrence D.; Kanouse, Julie; Keith, Janet; Kulakowski, Edward; Kulakowski, Laura; Kulakowski, Michael; Beezley, Nancy; Matzenger, Susan; Lanier, Bruck; Lanier, Ranae; Lanier, Rochelle; McConnell, John; McDaniel, James Sr; McDaniel, James Jr; McDaniel, Frances; McDaniel, Janetta; Walker, Marjorie; Mendoza, Nancy; Montgomery, John; Montgomery, Jon; Montgomery, Judy; Montgomery, Melanie; Neal, Deborah; Neal, Matthew; Olivas, Pamela; Olivas, Steve; Optebeke, Alan; Optebeke, Dean; Optebeke, Laurie; Osborne, Brian; Osborne, Christina; Osborne, Gloria; Pacheco, Buddy; Pacheco, Carmen; Pacheco, Louis Jr; Parker, James; Parker, Vikki; Popejoy, John; Popejoy, Kenneth; Popejoy, Phillip; Rowe, Rhonda; Popejoy, Ross; Popejoy, Wanda; Porter, Dale; Porter, Lynne; Prado, Christina; Price, James; Price, Rosemarie; Reed, Alfred; Reed, Ray; Reed, Vaughn; Rethaford, Brad; Rethaford, Dorothy; Rethaford, Howard; Saterfield, Sherrie; Cook, Tami; Willis, Cynthia; Rogers, Frank III; Rogers, Jennifer; Rogers, Patricia; Bishop, Dawn; Bishop, Kameron; Brown II, Marquis; Casey, David; Youree, Michelle; Clements, Deborah, Colquitt, Jon; Colquitt, Linda; Colquitt, Phillip; Colquitt, Suzanne; Millard, Jennifer; Daugherty, Curtis; Daugherty, Gabriele; Dobyns, Frank; Dooley, Mark; Dooley, Michael; Dooley, Patricia; Eberlein, Cathy; Eberlein, Christy; Eberlein, Heather; Eberlein, Heidi; Eberlein, Larry; Eberlein, Ronald; Elliott, James; Elliott, Pamela; Elliott, Satina; Potter, Jamie; Fleming, Freddie; Fleming, Jimmy; Fleming, Shaniece; Fox, Michael J.; Fox,

Richard; Fox, Sandra; Fox, Stephan; Garringer, Frances; Garringer, Herbert; Herlikofer, Margarete; Carbajal, Marion; Herlikofer, Robert; Holstun, Courtney; Holstun, Debra; Holstun, Justin; Holstun, Robert; Jackson, Wardell; Key, James; Key, Jeanell; Key, Jonathan; Key, Rhonda; Key, Roger; Kjorvestad, Aleina; Kjorvestad, Amanda; Kjorvestad, Christopher; Kjorvestad, David; Kjorvestad, Deborah; Kjorvestad, Joshua; Kjorvestad, Wayne; Larochelle, Arlene; Larochelle, Marie; Larochelle, Richard; Larochelle, Richard Jr; Nicoll, Brian; Nicoll, Traci; Ortiz, Vicky; Reed, John; Anderson, Corinne; Reed, Sarah; Shearer, Bradley; Shearer, Brian; Shearer, John; Singh, Harbans; Singh, Shangara; Singh, Surinder; Srack, Benjamin; Shamblin, Donna; Kano, Janet; Srack, Icel; Staresinic, Anthony; Staresinic, Kirk; Stoye, Mollie; Stoye, Pamela; Stoye, Rodney E.; Stoye, Rodney S.; Strona, Patrick; Strona, Rosemary; Swauger, Tammy; Treadway, John; Vinson, William M.; White, Charles; White, Daniel; White, Dennis Jr; White, Sarah; Wildman, Mary; Woods, Jason; Woods, Randall; Woods, Susan; Acosta, Guadalupe; Acosta, Maurice; Allen, Brianna; Allen, Shane; Allen, Steven; Anderson, Alvin; Anderson, Chad; Anderson, Christena; Rowe, Deanna; Anderson, Jon; Diaz, Sheryl; Asher, Jeffrey; Asher, Kathleen; Asher, Kristine; Baird, Crystal; Baird, Kathy; Baird, Troy; Baird, William; Benson, Cory; Benson, Frank; Bernard, Jenny; Velehradsky, Mary; Born Eyre, Christina; Born, Leroy; Brace, Erik; Brace, Mark; Brace, Pamela; Brace, Ryan; Brown, Bobby; Brown, Jean; Brown, Mark; Brown, Pamela; Balleza, Sheila; Burchfield, Larry; Burchfield, Misty; Burchfield, Shannon; Burchfield, Susan; Burchfield, Wendy; Cain, Rhonda; Carr, Christopher;

Carr, Douglas; Carr, Jennifer; Carroll, Helen; Carroll, Londa; Carroll, Melvin; Catanese Jr, Frank; Chappell, Charles; Guerrero, Kasey; Clegg, Brandi; Clegg, Kathy; Clegg, Krista; Clegg, George; Corbett, Jonathon; Corbett, John; Corbett, Karla, Corkins, James; Cox, Brenda; Cunningham, Colleen; Devol, Billie; Devol, Lance; Donovan, Edward; Donovan, Gary; Donovan, Michael; Doucette, James; Doucette, Jeanne; Dumond, Helen; Edwards, Spring; Ethridge, Alan; Ethridge, Nora; Ethridge, Aron; Ethridge, Lori; Ethridge, Natalie; Ehrlich, Sheila; Fantocone, George; Flagtwet, David; Flagtwet, Julie Smith; Flewelling, Lydia; Flory, Fredrick; Forrestal, Faith; Forrestal, Kevin; Forrestal, Lydia; Frazier, William; Fullerton, Patsy; Fullerton, Toni; Gale, Dawn; Gale, Dustin; Garcia, Robert; Garringer, Allen; Garringer, Dennis; Garringer, Melvin; Giffin, Lydia; Green, Archie L.; Green, Archie J.; Green, Christopher; Green, Teresa; Green, William; Guziejka, Jeri; Guziejka, Jessica; Guziejka, Joseph C.; Guziejka, Joseph K.; Haag, Danny; Holderby, Brandy; Holderby, Christy; Holderby, William; Holliday, Randall; Human, Charles; Human III, Charles; Human, Rawland; Huyer, Tracey; Jaeger, Alan; Jaeger, Brent; Jaeger, Kim; Jaeger, Paul; Jaeger, Tony; Jackson Jr, William; Jones, Ethel; Kanouse, Steven; Keenan, Jessie; Keenan, Michelle; King, Wilda; Lancaster, John; Larson, David W.; Larson, David G.; Larson, Lura; Larson, Monica; Loggia, Philip; Loggia, Mary; Saran, Linda; Martinez, Adam; Martinez, Felix; Martinez, Mark; Smith, Pattie; Matthews, Donald; Mathis, Micheline; Mathis, Michael; Moody, Otila; Powell, Charles; Pattison, Vanessa; Qualls, Colette; Rentfro, Kristopher; Rentfro, Kurtis; Reyes, Brenda; Ruiz, David; Ruiz, Mary; Ruiz,

George; Ruiz, Phillip; Ruiz, Michael; Ruiz, Laura; Rowe, Jeffrey; Salce, Manuel; Salce Jr, Manuel; Salce, Mary; Salce, Matthew; Silva, Cindy; Silva Sr, John; Silva Jr, John; Silva, Michael; Silva, Jeffrey; Singh, Kartar; Smith, Ashlee; Smith, Dawn; Smith, Jade; Smith, Jeffrey J.; Smith, Terry; Smith, Walter; Schafer, Emil; Schafer, Sylvia; Saterfield, Melissa; Saterfield, Jenni; Saran, David; Saran, Tiffany; Saran, Jessica; Elstner, Juliette; Taylor, Maude; Todd, William; Todd, Merle; Todd, Dixie; Tingle, Joan; Trust, Donna; Trust, Jason; Trust, Tammy; Vance, Marrissa; Velazquez, Armando; Vernon, Linda; Vernon, Troy; Verduzco, Lori; Verduzco, Jose; Verduzco Jr, Jose; Walker, Rock; Webber, Geraldine; Weinhart, John; Davenport, Deana; Carter, Sylvia; Wilborn, Tina; Woodmancy, James; York, Cheryle; Ayala, Annette; Bazurto, Gerald; Bazurto, Mistie; Bode, Zoeann; Bean, Lynnea; Ballew, Bryan; Diephof, Amber Y.; Coffman, Crystal; Crites, John B.; Crites, Jennie; Crites, John E.; Stone, Stacey; Catanese, Georgia; Catanese, Edmond; Converse, Tommy; Campbell, Wayne; Campbell, Frank; Cook, Bobbie; Cook, Joyce; Cook, Jeanie; Cook, Patricia; Cook, Bruce; Burton Cook, Eric; Cook, Robert; Duffy, Mark; Duffy, Kwang; Duffy, Bryen; Duffy, Noreen; Duffy, Michelle, Diephof, Harry; Diephof, Kristi; Diephof, Corri; Diephof, Amber Y.; Dicey, William A.; Dicey, Karen; Dicey, Brandis; Dicey, William F.; Dennis, Richard; Dennis, Susan; Dejong, Randall; Dejong, Jane; Dejong, Amy; English, Debbie; English, Julienne; Estrada, Rosemarie; Estrada, Thomas; Evans Jr, Jimmy; Evans, Michele; Evans, Tamitha; Evans, Leslie; Evans, Michael; Eves, Richard C.; Reed Eves, Lucinda; Eves, Candace; Gaines, Mary; Gaines, Willie; Gaines, Wykami; Rachal,

Charles; Gaines, Wytina; Garvin, Thomas; Garvin, Lucille; Gates, Floyd; Gates, Thelma; Gates, Karen; Gates, Tamara; Gates, Allen; Goodermuth, Nancy; Goodermuth, Ronald; Goodermuth, Kenneth; Clark, Cheryl; Garcia, Pauline; Ayon, Richard; Gibson Jr, Ronald; Gibson, Christopher; Gibson, Jessica; Heflin, John; Heflin, Sandra; Heflin, Brian; Heflin, Jody; Heflin, Matthew; Gudin, Phillip; Gudin, Robert; Gudin, Melissa; Garringer, Sandra; Garringer, Crystal; Garringer, Tobias; Gayk Jr, Raymond; Gayk, Allison; Crites, Bonnie; Hammond, Robert; Megyeri, Sharyn; Yuma, Gina; Hammond, Theresa; Huntsman, Paula; Huntsman, Richard; Huntsman, Kimberly; Howard, Kathryn; Hutt, Suzette; Hartsock, John; Hartsock, Irma; Hartsock, Nicholas; James, Johnnie; Wilson, Deborah; James, Keith; Brown, Alesia; Cleer, Patti; Cleer, Michael; Cleer, Kimberly; Cleer, Stacie; Kunert, Andrew; Kanouse, James; Kanouse, Judith; Kruger, Frank; Ames, Starr; Hargrove, Toni; Kukol, Justin; Kulakowski, Mike; Kulakowski, Patti; Kulakowski, Brent; Kunert, Tom; Lyon, Terri; Loggia, Lily; Lake Jr, Harold; Lake, Darla; Lake, Sean; LaMagna, Robert; LaMagna, Dianne; Gorton, Noelle; LaMagna, Anthony; Crites, Sharon; Moore, Barbara; Moore, Johnathon; Moore, Joseph; Mendez Guerrero, Dina; Mosher, Diane; Shoemaker, Jennifer; Marrufo, Daniel; Marrufo, Vera; Macan, Connie; Halford, Iva; Mays, Lois; Mays, Denice; Meeks, Margie; Meeks, Harold; Meeks III, Harold Butchie; Meeks, Rebecca; Meese, David; Meese, Gina; Meese, Sean; Meese, Stephen; Miller Jr, Clyde; Miller, Mitchell; Morgan, Danny; Morgan, Jeffrey; Moore, Ned L.; Moore, Diane; Olgren, Christine; Moore, Lesley; Moore, Ned L.V.C.; Munoz, Valerie; McConnell, Troy;

McConnell, Robert; Smith, Judy; Alfaro, Sara; McKinney, Leslie; McKinney, Joan; McKinney, John; McKinney, Janeen; McKinney, Kevin; Qualls, Odell; Qualls, Carol; Qualls, Brett; Ramirez Jr, Apolonio; Ramirez, Faye; Ramirez, Falisha; Ramirez, Bianca; Ramirez, Letisha; Reaver, Philippa; Reaver, David; Cadwalader, Michael; Reinalda, Marie; Reinalda, David; Reinalda Jr, Robert; Rice, Arnold; Rice, Mildred; Rice, Sherri; Rice, Terri; Robinson, Linda; Robinson, Mark; Rowe, James; Robinson Jr, Mark; Parsell, Cindy; Rowe Jr, James; Bell, Penny; Marrufo, Gloria; Skinner, Bill; Skinner, Charlotte; Skinner, Michael; Skinner, Mark; Stoner, Sheila; Stambersky, David B.; Stambersky, Patrick; Stambersky, Joseph; Stambersky, Melissa; Stambersky, David M.; Sullivan, Virgil; Sullivan, Arlene; Sullivan, Anthony; Dansie, Tamra; Swauger, Robert; Swauger, Anne; Stevens, Stacey; Todd, Adrienne; Todd, Vanessa; Todd, Jonathan; Velazquez, Frank; Velazquez, Grace; Walter, Paul; Walter, Ethel; Walter, Wendy; Wareing, Bonnie; Wareing, Richard; Wareing, John; Wareing, Michael; Wareing, Kimberly; Wemple, Harry J.; Wemple, Harry G.; Wemple, Olive; Bell, Marcia; Winrow, Olive; Weethee, Valerie; Weethee, Steven; Weethee, Brandon; Weethee, Mindy; Wixom, John; Wixom, Mary; Wixom, Daniel; Longanecker, Sandy; Williams, Brian; Williams Lake, Michael; Yoder, Donald L.; Yoder, Delores; Rice, Deanna; Smith, Michelle; Yoder, Melanie; Yoder, Donald J.; Zazzaro, Kimiko; Zazzaro, Guy; Swanson, Deborah; Carman, Daniel; Aguilar, Cipriano; Aguilar, Margarita; Manzano, Ida; David, Debbie; Asborno, Adam; Asborno, Bruce; Asborno, Phyllis; Asborno, Stacy; Asborno, Tony; Arredondo, Elaina; Arredondo, James; Arredondo, Joseph;

Arredondo, Jose; Arredondo, Joyce; Ayala, Arthur; Ayala, Arturo; Ayala, Christina; Ayala, Lailana; Balding, Margaret; Balding, Ralph; Barbosa, Joshua; Barbosa, Matthew; Bernal, Deborah; Bernal, Michael R.; Bernal, Michael J.; Bernal Griffie, Michelle; Burkeen, Jeffrey; Burkeen, Patricia; Burkeen, Tiffany; Calzada, Javier; Fowler, Shenei; Crutcher, Kenneth; Crutcher, Lisa; Crutcher, Paul; Mayer, Sharon; SantaCruz III, Edward; Curl, John; Curl II, John; Curl, Racheal; Curl, Stephanie; David, Autumn; David, Douglas; Davis, Charles; Davis, Lucille; Deckert, Debra; Deckert, Jamie; Deckert, Jeremiah; Deckert, Rachell; DeYoung, Margaret; Dominguez, Christopher; Dominguez, Jose; Dominguez, Shirley; Eatmon, Bobby; Eatmon, Lutrica; Eggleston, David; Epperson, Jack; Epperson, Janet; Mack, Karla; Epperson, Kristine; Epperson, Steven; Eyre, Sharon; Mitchell, Jason; Ferrell, Jenifer; Ferrell, Joann; Florentine, Raymond; Flory, Lewellyn; Flory, Marie; Jenkins, Marina; Flory, Melinda; Flory, Melissa; Underwood, Melodee; Fortuna, John; Fox, Michael L.; Fox, Renee; Garcia, Bertha; Garcia, Richard; Griffith, Georgia; Graham, Beverly; Graham, Leslie; Graham Jr, Leslie; Graham, Nita; Greenhouse, Isaac; Greenhouse, Maria; Greenhouse, Patrick; Hicks, Jessica; Hrncir, Alice; Hrncir, Robert; Jackson, Laura; Johnson, Cuma; Johnson, Doris; Johnson, Franklin; Stanton, Lauri; Rozell, Marsha; Kanouse, Melanie; Knox, Andrew; Knox, Geoffrey; Knox, Isaac; Knox, Sandy; Manzano, Anthony; Manzano Jr, Jose; Hitchcock, Sylvia; Moore, Rickie; Moore, Sharon; Moreno, Elias; Logan, Penny; Moreno, Rita; Morse, Joshua; Morse, Shannon; Morton, Renee; Mendonsa, Kelly; Mendonsa, Steven; Oftelie, Eddie; Oftelie, Kerry; Orrell, James;

Orrell, Heather; Orrell, Karen; Orrell, Thad; Polak, Clara; Reed, Yolanda; Wilder, Davey; Rhoads, Shawn; Roberson, Tracy; Roberson, William; Rose, Ethel; Rose, James; Rose, John; Rowe, Misty; Sartor, Henry; Sartor, Lisa; Sartor, Rosemarie; Scarlett, Amanda; Scott, Doris; Shorman, Catherine; Shorman, Jasen; Shorman, Robert; Shortle, Carmel; Shortle, Leo; Sliger, Floyd; Sparks, Jason; Sliger, Phyllis; Sliger, Sean; Snyder, Grace; Taulbee, Beverly; Taulbee, Holmer; Taylor, Guy; Thomas, Daniel; Turner, Beth; Turner, Delbert; Turner, Jacqueline; Turner, James; Turner, Jeremy; Turner, Joseph C.; Turner, Joseph M.; Walter, John; White, Cheryl; Bryant, Tanya; Williams, James C.; Williams, James G.; Williams, Pearl; Williams, Vera; Woodside, Bob D.; Woodside, Bob E.; Woodside, Donna; Ray, Joni; Woodside, Randall; Wright, Jean; Rust, Daniel; Rust, Justin; Rust, David; Rust, William; Rust Erickson, Cynthia; Erickson Jr, Earl; Erickson, Cheryl; Buser, Giovana; Buser, Harry; Edwards, Michelle; Edwards, Scott; Fantocone, Lisa; Fantocone, Donna; Fantocone, Joseph; Alexander, Christine; Alexander Sr, Kermit; Alexander, Stacey; Alexander, Troy; Alexander, Robyn; Balla, Melvin; Balla, Victoria; Balla II, Melvin; Barnes, David; Barnes, Catherine; Bell, Jean; Bell, Jennifer; Bell, Michelle; Bishop, Susan; Bishop, Scott; Bishop, Gregory; Brantley, Christina; Brantley, Dennis; Campbell, Ruth; Campbell, Donald; Campbell, Ronald V.; Clay, Isham; Clay, Linda; Clay, Lynette; Clay, Tracy; Cohn, Michael; Ketchum, Cheryl; Craig, Shirley; Cain, Lisa; Cain, Scott; Contreras, Salvador; Contreras, Lupe; Dingman, Donna; Dingman Jr Herbert; Dingman, Andrew; Duffy, Sandra; Duffy, John; Duffy, Frank; Duffy, Robert; Duron, Mary; Duron, Marlon; Duron, Christina;

Duron, Christopher; Davis, Bryan; Penny, Denise; Smith, Teresa; Dansie, Westley; Dansie, Ronnie; Stark, Mark; Fimple, Inez; Frazee, Joyce; Garcia, Katherine; Garcia, Silverio; Garcia, Lisa; Garcia, Anthony; Gibson, William; Gibson, Wendy; Gibson, Stephanie; Gibson, Michael; Gibson, Scott; Godwin, David; Godwin, Betty; Godwin, Elaina; Godwin, Amanda; Green, Thomas; Guilin, Fernando; Granger, Dushane; Girard, Belinda; Girard, Terry; Hansen, William; Hansen, Joanne; Hansen, Bambi; Hansen, Angela; Harman, Steve; Harman, Diane; Harman, Marlyn; Harman, Michael; Hollaway, Linda; Hollaway, Steven; Jorden, Christopher; Jackson, Mary; Jackson, Wendell; Jackson, Ronald; Jackson, Sharon; Jackson, Rhonda; Jackson II, Ronald; Stallard, Sharon; Jackson, Lindy; Johnson, Thomas; Jones, Lawrence C.; Jones Ceja, Deborah; Markley, Patti; Jones, Rhonda; Jones, William; Jones Black, Dana; Jones, Rex; Krumholz, Mary; Krumholz, Stanley; Krumholz, Aaron; Krumholz, Clare; Laimo, Frank; Laimo, Mary; Lindstrom, Edward L.; Lindstrom, Georgia; Lindstrom, Edward A.; Lindstrom, Keara; Mann, Sheryle; Moore, Percy; Macan, Edward; Macan, Nicole; Martinez, Joe; Martinez, Marsha; Martinez, Edward; Marquez, Stella; Marquez, Paul; Marquez, Monica; Meeks, Tresa; Meeks Jr, Harold; Meeks, Robert; Meyer, Thomas; Meyer, Brenda; Miller, Russell E.; Miller, Pamela; Miller, Alicia; Miller, Russell S.; Vidales, Angela; Noguchi, Chris; Navas, Shonda; Negrete, Yvonne; Neely, Joseph; Neely, Randell; Neely, Ryan; Neely, Erin; Nelson, Frances; Newman, Helena; Omerbegovic, Amir; Omerbegovic Sr, Meho; Omerbegovic Jr, Meho; Omerbegovic, Ophelia; Pierce, Bradford; Pierce, Jennifer; Pierce, Genevieve; Pierce,

Hubert W.; Pierce, Hubert D.; Reed, Terrance; Rodriguez, Fred; Ramirez, Daniel; Ramirez, Phillip; Rentfro, Kathryn; Rentfro, George; Rentfro, Kwynn; Rentfro, Ryan; Reyes Carrera, Amalia; Reyes, Leslie; Riojas, Anthony; Riojas, Sylvia; Riojas, Arlene; Riojas, Melisa; Ross, Carisa; Ross Jr, Karl; Sartor, Domenica; Evans, Rita; Scarbrough, Rickie; Scarbrough, Carole; Scarbrough, Robert; Scarbrough, Kasey; Scarbrough, Charity; Shearer, Daniel; Shearer, James; Shearer, Jeffrey; Entrikin, Judy; Smith, Iola; Smith, Brian C.; Smith, Phillip; Smith, Ralph; Richart, Robin; Thompson, Tanya; Telles, Nicholas; Telles, Rudy; Telles, Rudy M.; Thomas, Larry; Thomas, Mary; Thomas, Shelli; Trust, Brandon; Trust, Emily; Vertigan, Debby; Vertigan, Ricky; Vertigan, Larry; Yoder, Phillip; Yoder, Juanita; Yoder, Stephen; Yoder, Tim; Yoder, Craig; Main, Barbara; Abel, Ethan; Abel, Cynthia; Horn, Terri; Adams, Scott; Adams, Ronald; Adams, Christina; Aguilar, Daniel; Aguilar, Marcelino; Aguilar, Josephine; Aguilar, Robert; Aguilar, Rosemary; Alaniz, Paul; Almaguer, Robert Weldely, Amanda; Andrade, Joseph; Andrade, John; Andrade, Brenda; Andrade, Frankie; Andrade, Sheryl; Andrade, Edward; Andrade, Michael; Andrade, Renee; Andrade, Ronald; Andrade, Lisa; Atteberry, Charles; Barker, Christine; Barrilleaux, Connie; Barrilleaux, Dennis; Barrilleaux, Laurie; Barrilleaux, Joseph; Bates, Annette; Bates, Michael; Bowman, Eulene; Oliva, Bonnie; Batey, David; Black, Tina; Black, Amy; Bravo, Maria; Bouton, Rebecca; Brandl II, Daniel; Brandl, Samuel; Pasley, Tammy; Calderwood, Charles; Calderwood, Grace; Cisneros, Virginia; Chugani, Dayal; Chugani, Hoori; Chugani, Suraj; Chugani, Sunil; Chugani, Kanchan; Norris-Steiner, Ellen; Day, Stanley;

Dumond, William; Dumond, Terry; Dumond, Dana; Dunaway, Lola; Dyer, Robert; Dyer, Sandra; Dyer, Eric; Dyer, Charles; Bomar, Cynthia; Edwards, Teddy L.; Edwards, Robyn; Edwards, Teddy L.; Edwards, Steven; Edwards, Katie; Estrada, Paul; Elkins, Nikki; Ford, Rebecca; Ferris, Colene; Galbreath, Maria; Galbreath, Lori; Graham, Violet; Hadley, Joy; Hadley, Lonny; Hadley, Randy; Harris, Betty; Harris, Ernest; Harris, Michael; Harris, Steven; Harris, Randall; Harris, Erma; Harris, Byron; Harris, Reginald; Harris, Sonya; Hilliard, Melvina; Harris, Jason; Harris, Kevin; Hainey, Gordon; Hainey, Robert; Wagner, Tami; Hansen, Kriscinda; Huff, Patsy; Hawkins, Gladys; Hess, Kathlene; Hess, Kelly; William Hess, Brian; Hess, Steven; Hilmar, Virginia; Hilmar, Vlasta; Hitt, Daniel; Hitt, Ida; Hitt, Judy; Hitt, John; Hitt, Richard; Hitt, Brandi; Janakovic, Muriel; Kyle, Tracy; Kersey, Garred; Kersey, Patricia; Gass, Cynthia; Apodaca, Tracy; Kersey Jr, Garred; Kelley, Larry; Lambert, Joanne; Lae, Linda; Lae, David; Lae, Larissa; Lae, Alexander; Laiva, Charlotte; Laiva, Kristee; Lara, Lorene; Lara, Stanley C.; Lara, Stacey; Lara, Stanley J.; Lucero, Arthur; Lucero, Marc; Martinez, Mary; McWilliam, Melissa; Mello, Arnold; Mello, Joseph; Mengler, Antonia; Mengler, Josephine; Mengler, Henry; Mengler, Wilhelmina; Mitchell, Dennis; Morse, Daniel; Morse, David; Morse, Adam; Morse, Justin; Morse, E; Morse, Albert H.; Munoz, Michael A.; Munoz, Christina; Munoz Jr, Michael; Munoz, Andrew; Negrete, Tony; McCarthy, Trina; Negrette, Shelly; Negrette Jr, Tony; Oliva, John; Oliva, Deanna; Ormonde, Chris; Ormonde, Cyndie; Ormonde, Star; Ormonde, Ty; Ortega, Raoul; Osborne, Linda; Porter Jr, Trellis; Purcell, Louis; Purcell, Artemisa; Ricker, Mike;

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SUPREME COURT, U.S.
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No. 92-542

In The

Supreme Court of the United States

October Term, 1992

STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, et al.,

Respondents.

Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California, Fourth Appellate District, Division Two

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QUESTION PRESENTED

Real Parties In Interest (plaintiffs in the lower court) submit that the instant Petition presents *no* federal question for review.

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I. STATEMENT OF THE CASE

At issue is a California Court of Appeal decision giving collateral estoppel effect to a federal court's fact findings which were rendered in adjudicating pendent state law claims. The California Court of Appeal concluded that, as a matter of California law and policy, the state trial court properly adopted and utilized the federal rule of finality when barring the re-litigation of the matters determined by the federal court. Now before the United States Supreme Court, Petitioner attempts to challenge this construction and application of state law.

II. SUMMARY OF ARGUMENT

Despite petitioner's characterizations, the decision of the court below implicates *no* federal question. The California Court of Appeal simply clarified an issue of *state* law.

The appellate court held that California has a policy of deferring to federal law when determining the issue-preclusive effect of federal-court findings. As a matter of state law, this policy of deference applies irrespective of whether the federal-court findings are made when adjudicating a federal question or whether they are made in conjunction with a pendent state law claim.

Because the California Court of Appeal was determining an issue of state law and because no federal interest has been impaired, jurisdiction under Supreme Court Rule 10 does not lie.

III. ARGUMENT

A. PETITIONER FABRICATES ISSUES FOR REVIEW IN AN EFFORT TO FIND A FEDERAL QUESTION ON WHICH TO BASE ITS PETITION

1. The Subject Decision Does Not Turn on Federal Full-Faith-and-Credit Principles

Petitioner advances matters for review that are not at issue in this case and which were unnecessary to the decision of the California Court of Appeal. Petitioner's first "question presented" is deceptively framed as follows:

> Does the Full Faith and Credit Clause of the United States Constitution and/or the Full Faith and Credit Act require that federal law determine the preclusive effect of a prior federal order adjudicating state law claims?

Petition at i.

Petitioner's framing of the first "question presented" creates the impression that it seeks to have federal collateral estoppel law applied in this case. In fact, however, Petitioner, citing *Stoll v. Gottlieb*, 305 U.S. 165 (1938), wants this Court to mandate that only the rule of finality applied to state-court adjudications can govern the preclusive effect of federal-court determinations of pendent state law claims. But state law *is already being applied* in this case. The state court, in interpreting state law, has simply decided to adopt the federal-court rule of finality for purposes of the collateral-estoppel effect of factual findings made in a federal proceeding. This construction

and application of state law should be left to the California courts, which have resoundingly rejected Petitioner's contentions concerning California law.

Where, as here, state law is applied in a way that does not violate federal law or interfere with any federal right, Supreme Court intervention is unwarranted:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds . . . . Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.

Herb v. Pitcairn, 324 U.S. 117, 125-126 (1945); *accord Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

Even assuming federal full faith-and-credit provisions require California to apply federal law in this case, the unpublished opinion[1] of the California Court of Appeal obviously does not contravene federal principles of full faith and credit. On the contrary, the Court of Appeal deferred to the federal rule of finality in crafting

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[1] California Rules of Court provide that an unpublished opinion "shall not be cited or relied on by a court or a party in any other action or proceeding." California Rule of Court 977. Hence, the unpublished opinion at issue here has no value as precedent other than to the parties to this proceeding.

the state-law rule. Since California is embracing and utilizing federal law to determine the effect of federal-court rulings, the power and authority of federal courts to render and enforce their judgments is not being threatened. Moreover, because deference to the federal court is occurring as a matter of California law, any issue concerning the scope and effect of federal full-faith-and-credit provisions need not, and indeed should not, be reached by this Court. *See Piccirillo v. New York*, 400 U.S. 548 (1971); *California v. Krivda*, 409 U.S. 33 (1972); *Department of Mental Hygiene of California v. Kirchner*, 380 U.S. 194 (1965); *Michigan v. Long*, 463 U.S. 1032, 1040 (1983) ("Respect for the independence of state courts, as well as avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground.").

2. Petitioner Also Seeks an Advisory Opinion on an Irrelevant *Erie* Question

Petitioner's second "question presented" is equally unfounded. Contrary to Petitioner's assertion, *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938), has no bearing here. This case does not present the question of which law a *federal* court should apply; rather, the issue presented is solely one of *state* law. And because the state court has construed state law so as to defer to federal law, this case presents a situation exactly opposite to that presented in *Erie*, which involved a federal court applying state law.

Moreover, the prior federal action was *not* a diversity action. In that action, Petitioner itself, as plaintiff, invoked federal jurisdiction by bringing suit under both

federal and state law. *See* Court of Appeal's opinion, at Petition Appendix A at App. 4 (hereinafter "Opinion at App. ___."). Defendants in the federal court then filed compulsory counterclaims under many of the same state laws asserted by Petitioner in its pendent claims. *Id.* Those compulsory counterclaims are the basis for collateral estoppel in this case. Because Petitioner itself invoked federal jurisdiction to pursue state law claims, Petitioner is most disingenuous in arguing that federal collateral estoppel law should not form the basis for the state court's rule of finality.

The absurdity of Petitioner's argument is apparent when viewed in light of the *raison d'etre* of diversity jurisdiction, namely, to provide a neutral forum for the resolution of disputes between citizens of different states. *Pease v. Peck*, 59 U.S. 595, 599 (1856). Here, that concern is irrelevant. Petitioner has no ground, equitable or legal, for insisting that the state court apply a rule of finality different from that which would be applied by Petitioner's own forum of choice: the federal court.

Petitioner must therefore ignore the record in asserting that review should be granted here to resolve the "disagreement among the circuits as to whether rules of res judicata are procedural or substantive under the principles laid down in *Erie*." Petition at 15. The California court did not decide what law federal courts should apply. Rather, the court looked to federal cases for guidance on how *California* should approach this issue. The court concluded that the "best-reasoned" approach is the one followed by the majority of circuits, namely, that the effect given to federal-court determinations of state-law

claims should be governed by federal law. Opinion at App. 10-11.

Significantly, the Court of Appeal noted that, even though the Ninth Circuit embraces the minority position that state law should apply to determine the effect of federal findings, because California defers to federal law to fashion the state-law rule, the "somewhat circular result" is that federal law applies anyway. Opinion at App. 13. *See Bates v. Union Oil Company of California*, 944 F.2d 647, 649 (9th Cir. 1991), *cert. denied*, 118 L. Ed. 2d 424 (1992) (noting California "would apply federal law to determine the preclusive effect of a prior federal judgment"); *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir.), *cert. denied*, 459 U.S. 1087 (1982); *Performance Plus Fund, Ltd. v. Winfield & Co.*, 443 F. Supp. 1188, 1190 (N.D. Cal. 1977) (California has applied "what this Court considers the appropriate rule and has relied on federal law to give res judicata effect to a federal court judgment pending on appeal").

The Court of Appeal concluded its analysis by explicitly holding that California will defer to the federal rule regardless of whether a federal- or state-law issue was being decided, and the federal rule of finality will be utilized even if a federal court might look to state law, since "the policy of this state would reflect the inquiry back to federal authority." Opinion at App. 16-17.

Accordingly, any split in the federal circuits over how a federal court might treat a prior *diversity* action for purposes of collateral estoppel is irrelevant to the facts of this case.

B. THE SUBJECT DECISION RESTS ON WELL-ESTABLISHED PRINCIPLES OF CALIFORNIA LAW

In a long and unbroken line of cases, California courts have consistently looked to principles of federal law to determine how the state would treat federal-court rulings. *See, e.g., Estate of Hilton*, 199 Cal. App. 3d 1145, 1168 (1988); *Younger v. Jensen*, 26 Cal. 3d 397, 411 (1980); *Calhoun v. Franchise Tax Board*, 20 Cal. 3d 881, 887, *cert. denied*, 439 U.S. 872 (1978); *Swaffield v. Universal Ecsco Corp.*, 271 Cal. App. 2d 147, 160 (1969). As respected California legal commentator Bernard Witkin reports in his treatise on California procedure, California follows the rule that a federal court judgment has the same effect in the courts of this state as it would have in a federal court. 7 B. Witkin, *California Procedure* § 205, at 641 (3rd ed. 1985). The court below relied on this well-established principle of California law, stating, "it has also been repeatedly held that California courts will give the same effect to a federal court's order as that court would give it." Opinion at App. 8-9.

While Petitioner urged the Court of Appeal to distinguish this California authority where the federal court determined state-law issues, the Court of Appeal rejected this argument on the ground that both California policy and California case law require deference to the federal court notwithstanding the nature of the issues decided by that court. Opinion at App. 14-16. After examining the relevant California cases, the court concluded: "We can find in these authorities no indication that California would adopt a jealous rule aimed at exerting special

powers over a federal court adjudication based on California law." Opinion at App. 16.

Petitioner also argued that the rule of finality applied to state-court adjudications should be utilized here, because that is supposedly the rule a federal court would apply. The Court of Appeal rejected this approach on two grounds: First, that the best-reasoned federal cases apply federal law, and in any event, the state court will utilize the federal rule regardless of how a federal court might approach this issue. As the court concluded:

> We therefore conclude that a federal court would look to its own law to determine the effect of the orders in question; even if it looked to California law, the policy of this state would reflect the inquiry back to federal authority. In either case, California respects the final federal decision on the issue.

Opinion at App. 16-17 (footnote omitted).

IV. CONCLUSION

The Court of Appeal has fully and carefully considered this matter, twice concluding that California will follow the federal rule when gauging the collateral-estoppel effect of federal-court findings on pendent state claims. *See* Petition, Appendix A and C. Although Petitioner has argued its unorthodox interpretation of California law to the California Supreme Court, that court has refused to disturb the Court of Appeal's determination that California law defers to federal law in this situation. *See* Petition, Appendix B. Real Parties respectfully submit

that California's determination of this state-law issue is beyond the purview of this Court, and that the matter should rest with the state court. The petition for writ of certiorari should therefore be denied.

DATE: October 9th, 1992

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No. 92-542

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In The

Supreme Court of the United States

October Term, 1992

STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California, Fourth Appellate District

RESPONDENT *NEWMAN* COORDINATING COMMITTEE'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Should the Court review a California intermediate appellate court decision giving collateral estoppel effect to federal court findings where the decision:

   a. rests upon an independent state law ground, and therefore raises no substantial federal question;

   b. is interlocutory, does not finally resolve the litigation and can be reviewed by this Court if necessary and appropriate when and if a final judgment is entered;

   c. is unpublished and under California law may not be cited as precedent; and

   d. is correct on independent grounds not disclosed by the Petition and therefore would have to be affirmed in any event?

2. Should the Court review Petitioner's *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938) contention where it was not litigated or decided below and does not apply in any event because the federal court findings were not made in a diversity case and were made under federal law?

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18 Charles A. Wright, et al., *Federal Practice & Procedure*, § 4472 (1981) 19

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On Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California, Fourth Appellate District

RESPONDENT *NEWMAN* COORDINATING COMMITTEE'S BRIEF IN OPPOSITION

JURISDICTION

The decision below is not a final judgment or decree under 28 U.S.C. § 1257(a). (pp. 11-13, below) Petitioner's rights were adjudicated under state law. (pp. 4-8, below)

STATEMENT OF THE CASE

With the following additions and corrections, Petitioner's statement of the case is adequate for the purpose of ruling on the Petition:

1. Petitioner's statement that the California Court of Appeal's decision rests on federal law and resolves a federal question, Pet. 4, 10, is inaccurate.[1] The decision is grounded on California law. (pp. 4-8, below)

2. Petitioner's statement that "[u]nder California law, the interlocutory federal order would not be entitled to preclusive effect," Pet. 4, is also incorrect. Under California law, most (but not all) interlocutory orders are not entitled to preclusive effect. But, as the court below held, interlocutory orders of federal courts ruling on state-law claims are given collateral estoppel effect based on California's policy of deference to the federal rule of finality. App. 14-17.

3. The federal district court's order is not yet appealable under 28 U.S.C. § 1291, Pet. 4, 8, but Petitioner tried to pursue an interlocutory appeal under 28 U.S.C. § 1292(b). The district court refused to certify the order.

4. Petitioner's statements regarding the two underlying actions, Pet. 5-8, are laced with inaccuracies, most of which do not affect the jurisdictional issues raised by the Petition for Certiorari. However, it is important to note that there is no diversity of citizenship jurisdiction involved here.

5. The federal court findings and orders adjudicating issues against Petitioner were made under a federal statute, CERCLA, as well as under state law. Pet. 7; (pp. 8-11, below)

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[1] The Petition for Certiorari is cited as "Pet. ___". The Appendices to the Petition are cited as "App. ___."

6. The Court of Appeal did not summarily deny Petitioner's Petition for a Peremptory Writ of Mandate. Pet. 9. Rather, the court reached the merits, holding that:

> The order in the federal action was entitled to preclusive effect. Whether to give it such effect was within the trial court's discretion, and we do not find an abuse of that discretion.

App. 30.

7. The members of the Newman Coordinating Committee, defendants below and Real Parties/Respondents here, are Alcan Aluminum Corp., The Deutsch Company, McDonnell Douglas Corp., Masco/NI Industries, Inc., Quantum Chemical Corp., formerly known as National Distillers & Chemical Corp., Montrose Chemical Corp., Northrop Corp., Quemetco, Inc., Rohr, Inc. and Rockwell International Corp.

SUMMARY OF ARGUMENT

Petitioner asks the Court to review an intermediate state court's unpublished, interlocutory decision on a question of state law. Certiorari is not remotely warranted.

First, the decision turns on state law. The court simply held that federal court findings should be given collateral estoppel effect *as a matter of state law*. The decision presents no clash of state and federal interests and no federal question that warrants this Court's review.

Second, the decision does not present the issue Petitioner claims. The federal court findings were not made

solely under state law; most of them were made as well to resolve purely federal issues under CERCLA. Even Petitioner concedes that a state properly gives collateral estoppel effect to such findings.

Third, the decision is not final. It is a pretrial ruling that this Court can review if appropriate when and if a final judgment is ever entered.

Fourth, the state court considered the decision too insignificant even to meet the standards for publication in the official reports. The decision has no precedential force; it cannot even be cited in other cases. Thus, it is of interest only to the parties.

Finally, even if it did present the questions Petitioner claims, the decision is sound. It does not conflict with any decision of this Court, and it reaches the right result. There is not even any "error" to review and correct.

The Petition should be denied.

REASONS FOR DENYING THE WRIT

I. THE DECISION RESTS ON AN INDEPENDENT STATE LAW GROUND.

Although Petitioner purports to invoke this Court's jurisdiction under 28 U.S.C. § 1257(a), nowhere does it identify either any state law that has been drawn into question or any federal right that has been infringed. The explanation for Petitioner's inability to describe any clear basis for the Court's jurisdiction is simple: the Court of Appeal merely analyzed the issue on which the federal

circuits are divided and announced *California's* policy on the issue. It held as a matter of California law that a California court should apply the general federal rule of finality for res judicata purposes. Because the decision below is grounded on California law and policy, it is not appropriate for this Court's review.

There can be no doubt that the decision below rests on a state law ground. This is how Petitioner itself stated the issue for the Court of Appeal:

> What is California's law concerning the preclusive effect of an interlocutory order, based on California law, rendered by a federal district court sitting in California?

Supplemental Traverse, p. 1. *See also*, p. 11.

Real Parties addressed that state law issue:

> [U]nder California law California courts must apply the federal rule that "a federal judgment or order once rendered, is final for purposes of res judicata until reversed on appeal or modified or set aside in the court of rendition." *Martin v. Martin*, [470 P.2d 662, 667-68 (Cal. 1970)].

Coordinating Committee's Supplemental Return to Petition for Writ of Mandate and Memorandum of Points and Authorities, p. 15. *See also*, Plaintiff Real Parties' Supplemental Return to Petition for Writ of Mandate, p. 3 ("California courts have also consistently held that for the purpose of claim and issue preclusion in state court, a federal court judgment is *final* even before it has been tested on appeal.") (emphasis in original).

Finally, the Court of Appeal decided Petitioner's state law issue. Its holding that a federal judgment determining state law issues is entitled to collateral estoppel effect relies on California authorities, App. 14-16, and rests upon principles of *California* law:

> We can find in these authorities no indication that California would adopt a jealous rule aimed at exerting special powers over a federal court adjudication based on California law.

App. 16.

Petitioner claims that the case presents a federal issue because the court of appeal at one point poses the question of whether a federal court would apply state or federal law. Pet. 10; App. 7.[2] It is true that the court – as would any court – analyzed the existing precedent (which derives from federal cases) and determined that the better rule is found in the cases that hold that *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938) and *Dupasseur v. Rochereau*, 21 Wall. (88 U.S.) 130 (1875) are relics of another era. However, the opinion makes clear that the answer to that question makes no difference, because California would choose to give preclusive effect to the findings in any event:

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[2] Petitioner understood the state-law basis of the Court of Appeal's decision when it sought review by the California Supreme Court. Its petition explicitly recognized the Court of Appeal's declaration of California policy, and decried it as a misreading of California law and an "abdication of state sovereignty." Petition for Review 13-14, 17-18. The California Supreme Court did not find Petitioner's arguments to be persuasive.

> We therefore conclude that a federal court would look to its own law to determine the effect of the orders in question; *even if it looked to California law, the policy of this state would reflect the inquiry back to federal authority. In either case, California respects the final federal decision on the issue.*

App. 16-17 (emphasis added).

Thus, this Court's resolution of the conflict in the circuits would not change the outcome in this case. Even if *Dupasseur* were still good law and stands for the proposition Petitioner claims, it would at most permit, not compel, California to apply a different finality rule.[3] Regardless of *Dupasseur*'s fate, California, by its own policy, would hold that the federal decision was final and entitled to collateral estoppel effect.

California has chosen as a matter of its own law to give collateral estoppel effect to the federal findings. It was free to do so, and therefore its decision to do so raises no federal issue for this Court's review. *See International Longshoremen's Assn. v. Davis*, 476 U.S. 380, 387 (1986) ("we have no authority to review state determinations of purely state law."); *Michigan v. Long*, 463 U.S. 1032, 1038 n.4 (1983) ("[O]ur jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment."); 12 James W. Moore

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[3] This is clear from Petitioner's statement of the question. Pet. i. Full faith and credit does not forbid California from choosing to have federal law govern. It either permits or requires a choice California has freely made. In no sense is state law dependent on resolution of the full faith and credit question. *Cf. Ake v. Oklahoma*, 470 U.S. 68, 74-75 (1985).

et al., *Moore's Federal Practice* ¶ 511.01, at 8-65 (1990) ("[I]f the state court decides only the non-federal questions, or decides both the federal and non-federal questions, the Supreme Court has no jurisdiction to review if the non-federal ground is adequate to support the judgment.").[4]

II. THE CASE DOES NOT PRESENT THE ISSUE PETITIONER CLAIMS.

Petitioner says the issue is whether federal law must be applied to "determine the preclusive effect of a prior federal order adjudicating *state law claims*." Pet. i. (emphasis added). Petitioner's intimations that the federal court findings that it was negligent were based only on state law, Pet. 4, 7, 8, 18-19, are not true. Thus, the case does not fairly present the issue Petitioner poses.

The federal court made specific findings of negligence *under federal law* when it determined that Petitioner was liable under CERCLA as an owner and operator of the Stringfellow site. These findings were necessary to

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[4] There is another independent state law ground for the decision. California gives collateral estoppel effect to a decision that is "sufficiently firm," even if an appeal is possible or pending. *See Producers Dairy Delivery Co. v. Sentry Ins. Co.*, 718 P.2d 920, 924 (Cal. 1986). The findings here were made after a 37-day trial. They were reviewed by the Special Master and again, independently, by the district court, which found the evidence against Petitioner "overwhelming." They were sufficiently firm to be given preclusive effect. In fact, the Court of Appeal specifically found them "sufficiently firm" under the Restatement and federal law. App. 18-20. Since California follows the same standards, they were also "sufficiently firm" under California law. That is another reason why this Court should deny the Petition.

defeat the Petitioner's assertion that it should be considered an "involuntary" owner or operator exempted from liability under CERCLA § 101(20)(D), 42 U.S.C. § 9601(20)(D). As the Special Master explained:

> Even if the State were considered an "involuntary" owner or operator of the facility (see § 101(20)(D)) its liability is unaffected since the State caused and contributed to a release and a threatened release of a hazardous substance from the facility both before and after it became the owner operator, including but not limited to its negligence in (i) investigating the site, (ii) choosing the site, (iii) designing the site, (iv) supervising construction of the site, (v) delaying taking cleanup activities at the site and (vi) failing to remedy conditions at the site.

State Petition Ex. 18 and Ex. H at 4-5.

These findings, made under federal law, resolve six of the nine issues on which the California courts granted collateral estoppel. Pet. 8, issues a through f. Since they were made under federal law, it is undisputed that they are entitled to collateral estoppel effect measured by federal law regardless of what law measures the effect of the findings made under the pendent state law claims. *See Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938); *Martin v. Martin*, 470 P.2d 662, 667-68 (Cal. 1970). Therefore, even if it were correct that California was somehow forbidden from choosing to apply the usual federal preclusion rule to federal findings made on state law claims,[5] Petitioner

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[5] Of course that is not correct. Even if California were not bound to apply the federal preclusion rule, it was not forbidden

would still be collaterally estopped by the six findings that were also made under federal law.

Moreover, jurisdiction over the Petitioner's state-law claims and the defendants' state-law counterclaims is pendent to the exclusive federal jurisdiction of the CERCLA claims. See CERCLA § 113(b), 42 U.S.C. § 9613(b). This is not a diversity case, and therefore would present a far different issue from that presented in the debate between federal courts regarding the res judicata effect of a federal court sitting in diversity. Specifically, application of "the twin aims of the *Erie* rule: discouragement of forum shopping and avoidance of inequitable administration of the laws," *Hanna v. Plumer*, 380 U.S. 460, 468 (1965), will obviously be different here, where federal jurisdiction over the CERCLA claims is exclusive and the issue of forum shopping could not have arisen.[6] It does not appear that *any* federal circuit court has spoken on the issue of the res judicata effect of claims pendent to exclusively federal claims.

The net result is that the case is different from and more complicated than the one Petitioner describes. Petitioner is asking the Court to render an opinion on a question that is not fairly presented and that does not substantially affect the ultimate decision. This Court would have to affirm most of the collateral estoppel

---

from doing so. As shown above, California voluntarily chose to apply that rule as a matter of California law, and there is no basis for second-guessing that choice. (pp. 4-8, above)

[6] Petitioner's facile equation of diversity to pendent jurisdiction (Pet. 15 n. 6) is not to the point and is based on a miscitation.

rulings (for reasons Petitioner chose not to disclose) even if Petitioner's proposed issue were resolved in its favor. That would not be a wise use of this Court's time and resources. *See International Longshoremen's Assn. v. Davis*, 476 U.S. 380, 387 (1986) ("Nor do we review federal issues that can have no effect on the state court's judgment.") (dictum).

III. THE COURT OF APPEAL'S DECISION IS NOT FINAL.

This Court reviews only *final* judgments or decrees of state courts of last resort. 28 U.S.C. § 1257(a). This means that the state court judgment "must be subject to no further review or correction in any other state tribunal; *it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.* It must be the final word of a final court." *Market Street Ry. Co. v. Railroad Comm'n*, 324 U.S. 548, 551 (1945) (emphasis added). The finality rule is designed to avoid the "mischief of economic waste and delayed justice," *North Dakota Pharmacy Bd. v. Snyder's Drug Stores*, 414 U.S. 156, 159 (1973) (quoting *Radio Station WOW v. Johnson*, 326 U.S. 120, 124 (1945), that results from "piecemeal review." *Flynt v. Ohio*, 451 U.S. 619, 621 (1981). Moreover, "[t]his prerequisite to review derives added force when the jurisdiction of this Court is invoked to upset the decision of a State court." *North Dakota Pharmacy*, 414 U.S. at 159 (quoting *WOW*, 326 U.S. at 124).[7]

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[7] There are limited situations where the Court has found finality despite the need for further proceedings in the state

The Court of Appeal's decision does not satisfy this requirement. It is a pretrial ruling, not remotely "an effective determination of the litigation." At this point, Petitioner's ultimate liability is completely unknown. Indeed, it is not even known if *any* judgment ever will be entered against Petitioner based on the Court of Appeal's collateral estoppel ruling.

Nor would review by this Court now promote judicial economy. The issue, even as described by Petitioner, is not determinative of the litigation. At most, the Court could order a partial reversal. If the California courts did not reinstate their decision on another ground (*see* p. 8, n.4, above), Petitioner would still be bound by federal court findings that it was negligent in six different ways. There is simply no good reason for piecemeal review in this case.

Petitioner's only nod to finality is a citation to authorities holding that final disposition of a writ petition can satisfy the requirement. Pet. 2-3. But, the fact that Petitioner's pursuit of interlocutory review has concluded does not mean there is a final judgment. As shown above, there is no judgment effectively determining the litigation, and it cannot even be said that there ever will be.

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courts, *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), but this case is not one of them. *See O'Dell v. Espinoza*, 456 U.S. 430 (1981) (per curiam) (*Cox* exceptions not applicable. "Because the Colorado Supreme Court remanded this case for trial, its decision is not final 'as an effective determination of the litigation.' ") (quoting *Market Street Ry. Co. v. Railroad Comm'n*, above, 324 U.S. at 551).

The decision below is not final. Therefore, it is not subject to this Court's review.

IV. THE DECISION IS OF INTEREST ONLY TO THE PARTIES.

There is still another reason why this case does not meet the standards for review by this Court: the decision below is not "important;" it affects and is of interest only to the parties themselves. *See* Supreme Court Rule 10; *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955) (even after case argued and decided, certiorari dismissed as improvidently granted because Court does not sit for the benefit of particular litigants) (Frankfurter, J.); *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393 (1923) ("it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from the parties. . . . ").

The Court of Appeal declared that its opinion is "not for publication," App. 1, under the standards in California Rule of Court 976(b).[8] Clearly, the Court of Appeal did not believe it was rendering a decision of any great

---

[8] Rule 976(b) provides:

> No opinion of a Court of Appeal . . . may be published in the Official Reports unless the opinion:
>
> (1) establishes a new rule of law, applies an existing rule to a set of facts significantly different from those stated in published opinions, or modifies, or criticizes with reasons given, an existing rule;
>
> (2) resolves or creates an apparent conflict in the law;

importance. Moreover, the decision cannot be cited or relied on in any other case. *See* California Rule of Court 977(a) ("An opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action. . . . ") While the unpublished character of the opinion is not an absolute bar to review, *e.g., Terrell v. Morris*, 493 U.S. 1, 3, 4 (1989) (per curiam), it shows that the decision matters only to the parties in this case; indeed, it does not even exist for anyone else.[9]

The decision below has no precedential effect, and is of no general import or interest. Therefore, it does not warrant this Court's attention.

V. THERE IS NO REASON TO GRANT THE WRIT.

A. No Conflict With A Decision of This Court.

Petitioner contends that the decision below conflicts with this Court's decision in *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938). Pet. 11-13. This contention misunderstands both *Stoll* and the decision below.

---

(3) involves a legal issue of continuing public interest; or

(4) makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law.

[9] The California Supreme Court had no interest in the issues. It denied review without even waiting for opposition to the Petition. Moreover, the underlying federal orders themselves did not present a question worthy of certification under 28 U.S.C. § 1292(b).

First, *Stoll* holds only that federal law governs the preclusive effect of federal judgments. It does not hold that state law must govern the preclusive effect of federal judgments rendered under state law.[10]

Second, even if *Stoll* held what Petitioner wishes it did, the state law in this case is that "California respects the final federal decision on the issue." App. 17. Petitioner simply does not come to grips with the fact that the state law it wants applied defeats it and supports the Court of Appeal's decision.

B. No Conflict In The Circuits To Review Here.

Petitioner also advises that there is a conflict among the federal circuit courts as to whether state or federal law governs the preclusive effect of a federal judgment rendered under state law. Pet. 13-16. That may be, but the conflict is not implicated by this case. As shown above, this case does not present that question, and there are numerous independent grounds supporting the decision regardless of the answer to the question. (pp. 4-11, above) There are also prudential (if not jurisdictional) reasons why this decision is not ripe or appropriate for this Court's review. (pp. 4-8, 11-14, above)

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[10] *Stoll* does cite *Dupasseur v. Rochereau*, 21 Wall. (88 U.S.) 130 (1875), for the proposition, but that ancient case was decided long before the adoption of the Federal Rules of Civil Procedure. The Court of Appeal correctly held that *Dupasseur* does not comport with modern law and would lead to contradictory results in cases like this one. App. 9-13.

The facts and circumstances of this case make Petitioner's conflict in the circuits a remote abstraction. If it were otherwise appropriate to address that conflict, this case is not at all the vehicle for doing it.

C. No *Erie v. Tompkins* Issue To Review.

The Petition seeks to raise an *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938) issue that was not litigated or decided below. Pet. 16-19. Indeed, *Erie* was not so much as cited in any of the lower court decisions or orders. Therefore, the Court should decline to review this contention. *See Clark v. Jeter*, 486 U.S. 456, 459-60 (1988); *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 76-80 (1988); *Board of Directors of Rotary Int'l v. Rotary Club*, 481 U.S. 537, 549-50 (1987).

Petitioner's belated *Erie* argument is also meritless, for several reasons:

- the California Court of Appeal's decision rests on California law, so any applicable *Erie* principles are satisfied (pp. 4-8, above);
- the federal action here is not a diversity case, and hence it presents materially different issues from those raised in the federal circuit cases cited by Petitioner;
- most of the findings were made under federal law as well as under state law, so *Erie* principles don't apply to any of those findings (pp. 8-11, above); and

- according to the law review note Petitioner cites, the rule Petitioner complains of regarding finality for the purposes of the application of res judicata, is one of the issues that are "so trivial that they do not result in forum shopping or 'materially' alter the litigation." *See* Stuart D. Smith, Note, *Erie and the Preclusive Effect of Federal Diversity Judgments*, 85 Colum. L. Rev. 1505, 1522-23 (1985).

Petitioner offers no affirmative reason for the Court to grant the writ. It should be denied.

VI. THE COURT OF APPEAL'S DECISION IS SOUND IN ANY *EVENT.*

California chooses as a matter of California law to give collateral estoppel effect to a federal judgment even though the judgment is still subject to a possible appeal. No federal rule or principle precludes California from making that choice, and therefore there is no issue for this Court to review. (pp. 4-8, above)

Moreover, California's choice is wise, and the Court of Appeal's decision is sound. There is not even a need to review it to correct an "error."

The modern federal rule, *and the one that the California Supreme Court requires California Courts to apply as a matter of California law*, is that the preclusive effect of a federal judgment is determined by federal law " 'regardless of the nature of the case the federal court was deciding.' " *Empire Fire & Marine Ins. Co. v. J. Transport*, 880 F.2d 1291, 1293 n.2 (11th Cir. 1989) (quoting Charles A. Wright, *Law of Federal Courts* § 100A, at 696 (4th ed. 1983)).

The great majority of federal courts – and the most recent cases – have ruled this way. *See Johnson v. SCA Disposal Services*, 931 F.2d 970, 974 (1st Cir. 1991); *Gelb v. Royal Globe Insurance Co.*, 798 F.2d 38, 42 n.3 (2d Cir. 1986) (dictum), *cert. denied*, 480 U.S. 948 (1987); *Shoup v. Bell & Howell Co.*, 872 F.2d 1178, 1179 (4th Cir. 1989); *In re Air Crash at Dallas/Fort Worth Airport*, 861 F.2d 814, 816 (5th Cir. 1988); *Silcox v. United Trucking Service, Inc.*, 687 F.2d 848, 852 (6th Cir. 1982); *Petromanagement Corp. v. Acme-Thomas Joint Venture*, 835 F.2d 1329, 1333 & n.4 (10th Cir. 1988).[11]

The Restatement of Judgments announces the same rule. Section 87 provides: "Federal law determines the effects under the rules of res judicata of a judgment of a federal court." Restatement (Second) of Judgments § 87 (1982). This approach is favored by commentators as well.

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[11] The Ninth Circuit seems to take a slightly different approach that leads to the same result here. Under its approach, federal courts *sitting in diversity* must look to the law of the state in which they sit to determine the choice of law governing the preclusive effect of a prior federal judgment. *See Bates v. Union Oil Company of California*, 944 F.2d 647, 649 (9th Cir. 1991), *cert. denied*, 112 S.Ct. 1761 (1992). If the forum state is like California and requires application of federal law, then federal preclusion principles govern. *Id.* (applying federal law because Oregon, like Washington and California, would apply federal law to determine the preclusive effect of a prior federal judgment). As the Court of Appeal ruled below, California law looks to the federal rule, so the result is the same. *See Costantini v. Transworld Airlines*, 681 F.2d 1199, 1201 & n. 3 (9th Cir.), *cert. denied*, 459 U.S. 1087 (1982) (citing *Younger v. Jensen*, 605 P.2d 813, 822 (Cal. 1980) and *Levy v. Cohen*, 561 P.2d 252, 257 (Cal.), *cert. denied*, 434 U.S. 833 (1977)), *cert. denied*, 459 U.S. 1087 (1982) (Court applies federal preclusion law).

See, e.g., 18 Charles A. Wright, et al., *Federal Practice & Procedure*, § 4472, at 726 (1981); 1B James W. Moore, et al., *Moore's Federal Practice*, ¶ 0.410[1], at 362 (1992).

This rule is based on the principle of finality, which lies at the core of res judicata. As commentary to section 87 of the Restatement notes: "The principle of finality is an essential element of a court's authority" because it "express[es] the quality of a court's authority. . . . " Restatement (Second) of Judgments § 87, cmt. a, at 315 (1982). To put the matter plainly, a court cannot pretend to adjudicate matters if it does not have the inherent authority to ensure that its judgment is free from collateral attack by other courts. That is why on the issue of finality the Restatement adopts the position that federal law must govern. *Id.*, cmt. b, at 317 (since the question of a federal judgment's finality goes "to the essence of judicial function", the issue "should be determined by a federal rule").

The rule that Petitioner advocates would deprive the federal court of its authority to say whether its judgments were final. The effect of the rule would be to render a "final" federal judgment subject to collateral attack in state court. Our system of concurrent federal and state judicial systems cannot tolerate such a situation.

A corollary of Petitioner's rule is that parties who lose in federal litigation would have every incentive to challenge otherwise final federal judgments in subsequent state proceedings. That is precisely what Petitioner intends to do here. Its objective is *not* simply to relitigate issues that have already been decided; it also hopes to

undermine the findings in the federal action by obtaining contrary rulings in the state court action.

The purpose of res judicata is to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Those objectives are utterly thwarted by the position petitioner would have the Court adopt.

Nor is Petitioner correct in trying to attack the substance of the federal findings, and then speculating about the possible consequences if the findings were reversed.[12] To support its speculations, Petitioner cites the Wright and Miller treatise, Pet. 19 n.9, but immediately after the passage Petitioner quotes, the treatise solidly reaffirms the federal rule of finality of which Petitioner complains:

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[12] First, Petitioner erroneously suggests that the underlying federal court decision conflicts with *United States v. Montrose Chemical Corp.*, 788 F. Supp. 1485 (C.D. Cal. 1992). Pet. 18. The case is easily distinguished. In *Montrose*, the State asserted only exclusively federal CERCLA claims, and the court held that defendant's counterclaims were limited to recoupment. *Id.* at 1489-90. In the federal action here, Petitioner affirmatively asserted a number of state-law claims, including common law nuisance. That clearly waived its Eleventh Amendment immunities to counter claims based on similar state-law theories.

Second, Petitioner suggests its arguments are meritorious because the Ninth Circuit called them "plausible." Pet. 18 n.8. But that was in the context of finding the arguments were not so frivolous as to warrant sanctions. As the court below held: "We do not believe the State can take much comfort from this ruling. In our view 'plausible' is a word which invites suspicion." App. 23 n.13.

> So long as the second court is determined to press on to judgment pending appeal in the prior action, it remains necessary to answer the res judicata question. Most courts adhere to the answer established in the federal decisions. Despite the manifest risks of resting preclusion on a judgment that is being appealed, *the alternative of retrying the common claims, defenses, or issues is even worse. All of the values served by res judicata are threatened or destroyed by the burdens of retrial, the potential for inconsistent results, and the occasionally bizarre problems of achieving repose and finality that may arise.*

18 Charles A. Wright, et al., *Federal Practice & Procedure* § 4433, at 313 (1981) (emphasis added) In short, Petitioner's speculative complaints about the federal decision and the rule of finality are neither relevant nor well taken.

The Court of Appeal's decision furthers the purposes of finality and federalism and avoids the mischief Petitioner urges. There is no reason to review that decision.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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Of Counsel

October 14, 1992

RULE 29.1 LIST

APPENDIX A

Each corporate Real Party member of the Newman Coordinating Committee submits the following Rule 29.1 information:

Alcan Aluminum Corporation:

Parent: Alcan Aluminum Corporation is a wholly-owned subsidiary of Alcan Aluminum, Ltd. headquartered in Montreal (Quebec) Canada

Subsidiaries and/or Affiliates:

Alanx Holdings, Inc.
  Alanx Products Company, LP
Alcan Management Services U.S.A. Inc.
Alcan-Sumitomo Electric, Inc.
Alcan-Toyo America, Inc.
Alupower, Inc.
Ampersand Corporate Spinoff Ventures
  Limited Partnership
Ampersand Corporate Spinoff Ventures II
  Limited Partnership Blanx Holding, Inc.
  Blanx Products Partnership
Cyberdisk, Inc.
Erieview Cartage, Inc.
Kroy Industries Corporation
LDC Holdings, Inc.
LTC Holdings, Inc.
  Lanxide Technology Company, LP
Logan Aluminum, Inc.

Manufacturing Laboratories, Inc.
Phoenix Equipment Company
Rapak, Inc.
Sol-Gel Ceramic Products, Inc.
The Aluminum Rail Car Company Partnership (TARCO)

The Deutsch Company:

Parent: None

Subsidiaries and/or Affiliates: None

McDonnell Douglas Corporation:

Parent: None

Subsidiaries and/or Affiliates:

Finnish American International Trade, Inc.
Network Information Services Co., Limited

Montrose Chemical Corporation of California:

Parent: None

Subsidiaries and/or Affiliates:

Chris Craft Industries, Inc.
Stauffer Management Company

NI Industries, Inc.:

Parent: Masco Industries, Inc.

Subsidiaries and/or Affiliates:

NI West, Inc.

Northrop Corporation:

Parent: None

Subsidiaries and/or Affiliates:

Northrop Overseas Services Limited
Northrop Services Arabic Limited
Vought Holding Company
LPV Aircraft Company

Quantum Chemical Corporation:

Parent: None

Subsidiaries and/or Affiliates:

Atlantic Energy, Inc.
CUE Insurance Limited
Fallon Propane and Butane Company
Northwest L.P.G. Supply Ltd.
Quantum Chemical Europe B.V.
Qauntum Petrochemical Corporation Limited
Petrolane Finance Corp.
Petrolane Gas Service L.P.
Petrolane Incorporated

Quemetco, Inc.

Parent: RSR Corporation

Subsidiaries and/or Affiliates: None

Rainbow Canyon Manufacturing Company:

Parent: None

Subsidiaries and/or Affiliates: None

Rockwell International Corporation:

Parent: None

Subsidiaries and/or Affiliates:

Allen-Bradley Electronics Limited (England)
Allen-Bradley Enterprise Xiamen Ltd. (China)
Allen-Bradley (Hong Kong) Limited
Allen-Bradley India Limited (India)
Allen-Bradley International Limited (England)
Allen-Bradley Limited (England)
Allen-Bradley (N.Z.) Ltd.
Allen-Bradley (Overseas) Limited (England)
Allen-Bradley/Stromberg, Inc.
Allen-Bradley Technical Services Limited
Automotive Axles Limited (India)
Camden Investment Trust, Limited (England)
Constantine Insurance Company, Ltd. (Bermuda)
Controlmatic Allen-Bradley, S.A. de C.V.
Dirona, S.A. (Mexico)
Dynapro Systems, Inc. (B.C. Canada)
Ege Fren Sanayii Ve Ticaret A.S.
Ege Brakes Industrial Trading Co. Ltd. (Turkey)
Electrica Allen-Bradley, S.A. de C.V. (Mexico)
Electronics Corporation of America (Gr. Britain) Limited
F.A.S.E. - Forniture Automasiione e Strumentasione Elettrica S.p.A. (Italy)
Freios Master Equipamentos Automotivos Limitada (Brazil)
Hall Processing Systems

Hyundai A-B Ltd.
Industrias Erlo, S.A. de C.V.
Korea A-B Ltd.
Logicos-Sistemas De Controle Industrial Ltda (Brazil)
Mainstream Software Corporation
Manufacturers Leasing Associates XXXV (Brazil)
Metal Leve Allen-Bradley Sistemas Industrias Ltda.
Moligal Produtora De Assentos De Automovel, Limitada (Portugal)
M.P. O'Rourke Pty., Limited (Australia)
Nippon Bodei Sisutemuzu Kabushiki-Kaisha
Osai A-B Limited
Robotics Research Corporation
Rockwell Assemblies Ltd.
Rockwell Automotive Body Systems (U.K.) Limited
Rockwell Automotive (U.K.) Limited
Rockwell Braseixos S.A.
Rockwell Charitable Trustees Limited
Rockwell Clutch Co.
Rockwell Collins De Mexico, S.A.
Rockwell-Collins France S.A.
Rockwell-Collins (U.K.) Limited
Rockwell International Limited
Rockwell International Pension Trustees Limited
Rockwell International Suspension Systems Company
Rockwell International Taiwan Company, Ltd.
Rockwell PMC Limited
Rockwell Printing Machiner PLC
Rockwell Systems Australia Pty. Ltd.

Rockwell Standard of Australia Limited
Rockwell Switching Systems Limited
Rockwell Thompson Limited
Rockwell U.K. Limited
Rockwell Wabco Vehicle Control Systems
Rostone Europe Limited (England)
Ruedas De Venezuela, S.A.
Rockwell International Suspension Systems Company, U.S.
Rubery Owen-Rockwell Italia S.r.l. (Italy)
SCI Aux Pres Renard (France)
S.C.I. De Sully Sur Loire (France)
Silvant Plastics Limited
Tamet Compania Anonima (Venezuela)
TBR Co., Ltd. (Japan)
Tyseley Estates Limited (England)
Wilmot Breeden Employees Trust Limited (England)
Wilmot Breeden Group Properties Limited
Wilmot Breeden (Holdings) Limited (England)
Wilmot Breeden (Pressings) Limited (England)

Rohr, Inc.:

Parent: None

Subsidiaries and/or Affiliates:

Rohr Europe S.A.
Rohr Aero Service Europe
RII Services, Inc.
Transportation Insurance Ltd.
Tortuga Casualty Co.
United Insurance Co.
Wrensford Insurance Co. Ltd.

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No. 92-542

In The

Supreme Court of the United States

October Term, 1992

STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE, *et al.*,

Respondents.

Petition For A Writ Of Certiorari To The Court Of Appeal For The State Of California Fourth Appellate District, Division Two

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I.

INTRODUCTION

The appellate court in this case did far more than merely announce a state rule that parrots federal law. In *refusing* to apply California's res judicata law, the court assumed the mantel of a federal court and sought to determine which of two conflicting federal rules is correct. The state court's misapplication of federal law presents a federal question.

The Oppositions' ancillary arguments against certiorari are equally unavailing. The state court's decision is final. Collateral estoppel was applied only to the state law adjudications in the federal action – *not* the CERCLA findings. Review by this court is warranted.

II.

THE COURT OF APPEAL'S DECISION RESTS SOLELY ON AN ERRONEOUS INTERPRETATION OF FEDERAL LAW

A. The Court of Appeal's Misapplication of Federal Law Gives Rise to a Federal Question.

The appellate court both characterized the issue as a federal one and endeavored from the outset to resolve it as a federal court would. So framed, the question is appropriate for review by this Court. The Oppositions' assertion to the contrary simply disregards this Court's well established practice of accepting such state court determinations for review:

> "It is equally well established, however, that this Court retains a role when a state court's interpretation of state law has been *influenced* by an accompanying interpretation of federal law. In some instances, a state court may construe state law narrowly to avoid a perceived conflict with federal statutory or constitutional requirements. [Citations omitted.] In others, in contrast, the state court may construe state law broadly in the belief that federal law poses no barrier to the exercise of state authority. [Citation omitted.] In both categories of cases, this Court has reviewed the federal question on which the state-law determination appears to have been premised. *If the state court has proceeded on an incorrect perception of federal law, it has been this Court's practice to vacate the judgment of the state court and remand the case so that the court may reconsider the state-law question free of misapprehensions about the scope of federal law.*"

Three Affiliated Tribes v. Wold Engineering, 467 U.S. 138, 152 (1984) (Emphasis added.)

The decision in this case was not merely "influenced" by federal law – it embodies federal law. The appellate court's framing of the issue removes all doubt:

> "[W]ould a federal court apply its own law, or that of California in determining the issue; and, if federal law applies, what does it say?" (App. 7.)[1]

---

[1] Plaintiffs' claim that "[t]his case does not present the question of which law a *federal* court should apply" (Plaintiffs' Opposition at 4; emphasis in original) defies the court's own

The appellate court's answer to this question confirms that it viewed its role as a federal court interpreting federal law:

> "We therefore conclude that a federal court would look to *its* own law to determine the effect of the orders in question; even if *it* looked at California law, the policy of this state would reflect the inquiry back to federal authority. In either case, California respects the final federal decision on the issue." (App. 16-17.) (Emphasis added.)

Attempting to minimize the primacy of federal law to the appellate court's analysis, both Oppositions take this passage's reference to state "policy" out of context. They incorrectly assert that the court was referring to such policy as an alternative state law basis for its holding.

In reality, the "it" that is highlighted in the passage quoted above is the *federal* court. The court of appeal was merely adhering to its federal court perspective and attempting to divine how a *federal* court would determine what law to apply. By "reflect[ing] the inquiry back to federal authority," the court was simply restating the issue as a federal one.

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characterization of the issue. Plaintiffs' allegation that Petitioner has "fabricated" (*Id.* at p. 2) a federal question that was not raised in the lower courts is equally unfounded. Petitioner contended to the court of appeal that California's law of res judicata should be applied. The appellate court rejected this contention and framed the issue as what law "would a federal court apply." This Petition arises from that issue.

Because the court of appeal erred in its interpretation of *federal* law and erred in disregarding controlling decisions by this Court (*i.e., Stoll* and *Dupassuer*), this Court's jurisdiction is invoked. *See Three Affiliated Tribes, supra,* (review granted where state supreme court felt constrained by federal statute requiring Indian tribes' consent to civil jurisdiction of state court: Held that federal statute did not divest state of Indian jurisdiction); *United Air Lines v. Mahin,* 410 U.S. 623, 630-631 (1973) (federal question created when state supreme court justices erroneously "felt bound" by U.S. Supreme Court opinion in concluding that state law violated Commerce Clause); *State Tax Comm'n v. Van Cott,* 306 U.S. 511, 514-516 (1939) (review granted where state supreme court relied on overruled U.S. Supreme Court case which "required" exemption of federal income from state tax); *Red Cross Line v. Atlantic Fruit Co.,* 264 U.S. 109, 120 (1924) (review granted to correct state supreme court's reading of U.S. Supreme Court opinion which "required" that admiralty jurisdiction supersede state arbitration statute: Held that admiralty jurisdiction did not affect state law). *See also Zacchini v. Scripps-Howard Broadcasting,* 433 U.S. 562, 568 (1977); *San Diego Building Trades Council v. Garmon,* 353 U.S. 26, 29 (1957); *Standard Oil Co. v. Johnson,* 316 U.S. 481, 482-483 (1942).

B. Resolution of This Issue Will Both Change the Outcome of This Case and Resolve the Conflict in the Federal Circuits.

The Coordinating Committee makes the startling assertion that "this Court's resolution of the conflict in the circuits would not change the outcome in this case."

(Coordinating Committee Opposition at 7.) On the contrary, action by this Court would both lead to a resolution of the conflict in the federal circuits and could compel a different result in this case.

If this Court finds that the appellate court misapprehended the correct federal rule, California's rule of finality would control and collateral estoppel could *not* be given to the interlocutory federal order. By resolving the conflict in the circuits, this Court's decision would impact not only the parties to this litigation, but the entire federal judiciary.

C. *Erie* Applies.

Both Oppositions seek to avoid *Erie* by proclaiming the obvious proposition that the underlying state court action is not grounded in federal diversity jurisdiction.[2] *Erie* is nonetheless implicated because the state court adopted the rule of the federal circuits which contravene *Erie*. Accordingly, the appellate court's decision rests on an erroneous interpretation of federal law.

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[2] The Coordinating Committee takes this tactic one step further and urges that *Erie* does not apply to state law claims based on pendent jurisdiction. (Coordinating Committee Opposition at 10 n.6.) Not surprisingly, no support is offered for this assertion. As the leading commentators have noted: "It frequently is said that the doctrine of Erie Railroad Company v. Tompkins applies only in diversity of citizenship cases; this is simply wrong. The Erie case and the Supreme Court decisions following it apply in federal question cases as well." 19 Wright, Miller & Cooper, *Federal Practice and Procedure* § 4515, at p. 275 (1982).

III.

COLLATERAL ESTOPPEL WAS NEVER GIVEN TO THE CERCLA FINDINGS

The Coordinating Committee falsely asserts that collateral estoppel was also applied to the federal court's CERCLA findings. (Coordinating Committee Opposition at 8-9.) The trial court explicitly *refused* to grant collateral estoppel to the CERCLA liability findings because CERCLA is a status-oriented form of strict liability. This is confirmed in the court of appeal's opinion:

> "Thus, if *Stoll* is an authoritative statement of the law, the first argument is that a federal court would apply the California law of res judicata and collateral estoppel here, *because the issues determined by the jury were relevant not to the CERCLA claims – which are based on strict liability – but to the cross-defendants' state-law claims for indemnity based on shared negligence.*" (App. 7-8.) (Emphasis added.)

It is simply disingenuous to suggest that the federal court's CERCLA findings were, or could have been, afforded collateral estoppel by the state court.

IV.

THE COURT OF APPEAL'S DECISION IS A FINAL JUDGMENT

Without any discussion of Petitioner's case authorities, the Coordinating Committee incorrectly asserts that the appellate court's decision is not final for purposes of this Court's review. The argument ignores the fact that this Petition arises from a mandamus proceeding. As

such, it is a separate action against the lower court which has now run its course and is final for purposes of this Court's jurisdiction. *Madruga v. Superior Court of California*, 346 U.S. 556, 557 n. 1 (1954) ("[t]he State Supreme Court's judgment finally disposing of the writ of prohibition is a final judgment reviewable here under 28 U.S.C. § 1257"); *Bandini Petroleum Co. v. Superior Court of California*, 284 U.S. 8, 14 (1931) (proceeding for a writ of prohibition to restrain a court from enforcing its injunction order found to be a distinct suit and the judgment finally disposing of it found to possess requisite finality); *Detroit & Mackinac R.R. v. Michigan R.R. Comm'n*, 240 U.S. 564, 570-571 (1916) ("[i]t is settled that a proceeding in mandamus is an independent adversary suit, and a judgment awarding or refusing the writ is a final judgment. . . . ").

In contrast, the cases cited by the Coordinating Committee do not involve extraordinary writ proceedings. Those authorities are irrelevant.

V.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Petition for Certiorari be granted.

Respectfully submitted,

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